

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





ORIGINAL

75-4054

**United States Court of Appeals**

For the Second Circuit.

VIOLA CHOW,

Petitioner,

-against-

IMMIGRATION AND NATURALIZATION SERVICE,

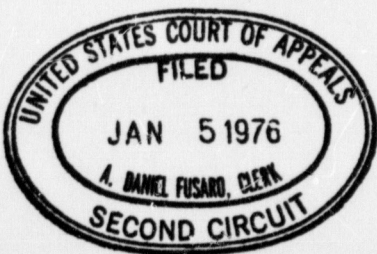
Respondent.

*Petition For Review Of  
Administrative Agency Action*

JOINT APPENDIX

IRVING E. FIELD  
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## APPENDIX

### TABLE OF CONTENTS

	<u>Page</u>
Petition for Review of Deportation Order, Order of the Board of Immigration Appeals dismissing appeal, and Order of Board of Immigration Appeals denying motion to reopen and reconsider, 75-4054.....	1
Order to Show Cause dated September 3, 1969 (39)*.....	3
Application for Temporary Withholding of Deportation (36).....	4
Decision of Immigration Judge dated November 8, 1971 (28).....	5
Notice of Appeal to the Board of Immigration Appeals dated November 17, 1971 (27).....	8
Notice of Entry of appearance as attorney dated January 3, 1972 (26)...	10
Petitioner's Brief to Board of Immigration Appeals filed April 26, 1972 (25).....	11
Transcript of oral argument dated April 26, 1972 (24).....	16
Decision of the Board of Immigration Appeals dated May 25, 1972 (23)...	24
Transcript of Deportation hearing dated November 25, 1972 (22).....	27
Decision of the Immigration Judge dated July 19, 1973 (21).....	40
Notice of Appeal to the Board of Immigration Appeals dated August 2, 1973 (20).....	46
Letter to Department of State from District Director dated March 25, 1974 (19).....	48
Letter to District Director from Department of State dated April 4, 1975 (18).....	50

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\*NOTE: The numbers in parentheses refer to the document numbers as listed in the "Index to Administrative Record."

	<u>Page</u>
Letter to District Director from Department of State dated June 3, 1974 (17).....	51
Decision of the Board of Immigration Appeals dated August 2, 1974 (16).....	53
Warrant of deportation dated August 7, 1974 (15).....	58
Letter of Irving E. Field to BIA dated August 5, 1974.....	59
Letter of Irving E. Field to BIA dated August 6, 1974.....	61
Motion to reopen and reconsider dated August 15, 1974 (14).....	62
Letter to Board of Immigration Appeals from petitioner's attorney dated August 15, 1974 (13).....	66
Letter to petitioner from District Director dated August 15, 1974 (12).....	67
Letter to Board of Immigration from petitioner's attorney dated August 16, 1974 (11).....	68
Memorandum to Chairman, Board of Immigration Appeals from Appellate Trial Attorney with Board of Immigration Appeals dated August 29, 1974 (10).....	70
Decision of the Board of Immigration Appeals dated September 11, 1974 (9).....	71
Letter to Board of Immigration Appeals from petitioner's attorney dated September 13, 1974 (8).....	72
Letter to petitioner's attorney from Trial Attorney dated September 24, 1974 (7).....	73
Memorandum to Appellate Trial Attorney from District Director dated October 3, 1974 (6).....	74
Letter to the Board of Immigration Appeals from petitioner's attorney dated October 4, 1974 (5).....	75
Government's memorandum in opposition to respondent's motion to reopen and reconsider (4).....	76
Respondent's memorandum in support of motion to reopen (3).....	81
Transcript of oral argument dated October 30, 1974 (2).....	87
Decision of the Board of Immigration Appeals dated February 13, 1975 (1).....	98



UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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VIOLA CHOW,

: DOCKET #75-4054

Petitioner,

:

-against-

:

PETITION FOR REVIEW

IMMIGRATION and NATURALIZATION SERVICE,

:

Respondent.

:

----- x

VIOLA CHOW hereby petitions the court for review of the order of deportation of the Immigration and Naturalization Service dated July 19, 1973, under File No. A12 084 054 - N.Y. (Francis J. Lyons, Immigration Judge) and the order of the Board of Immigration Appeals dated August 2, 1974 dismissing the appeal thereto, both of which orders became final on February 13, 1975; and for a review of the order of the Board of Immigration Appeals dated February 13, 1975, denying a motion to reopen and reconsider.

The petition seeks review of an order of deportation which denies withholding deportation under Sect. 243(h) of the Immigration and Nationality Act.

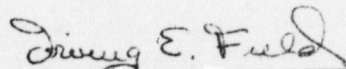
The grounds upon which review is sought are:

1. Denial of procedural and substantive due process.
2. Failure of the Immigration and Naturalization Service and the Board of Immigration Appeals to afford a fair hearing.
3. One or more of the decisions and orders was not made by a duly constituted Board of Immigration Appeals.
4. The Immigration Judge and the Board of Immigration Appeals failed to comply with Title 8, U.S.C. Section 1252(b).

5. The Board of Immigration Appeals failed to comply with Title 8, Code of Federal Regulations, Section 3.1.

6. The Immigration Judge and the Board of Immigration Appeals failed to indicate the proper degree of certainty with which they reached their factual conclusions.

The validity of none of the orders has been upheld in any prior judicial proceeding.



Irving E. Field  
Attorney for Petitioner  
310 Madison Avenue  
New York, N. Y. 10017

(212) MU. 7-5018

DISTRICT DIRECTOR  
RECEIVED  
MAR 21 1975  
T.K. Barbati Secy  
NEW YORK, N.Y. 1000

COPY RECEIVED  
Paul J. Curran  
UNITED STATES ATTORNEY  
(Initials)  
3/21/75



UNITED STATES DEPARTMENT OF JUSTICE  
Immigration and Naturalization Service

ORDER TO SHOW CAUSE and NOTICE OF HEARING

In Deportation Proceedings under Section 242 of the Immigration and Nationality Act

UNITED STATES OF AMERICA:

In the Matter of

VIOLA CHOW

Respondent.

To: Viola Chow

(name)

File No. A12 084 054

c/o Federal Reformatory for Women, Alderson, W. Va. 24910  
Address (number, street, city, state, and ZIP code)

UPON inquiry conducted by the Immigration and Naturalization Service, it is alleged that:

1. You are not a citizen or national of the United States;
2. You are a native of China  
and a citizen of China;
3. You entered the United States at Longview, Washington on  
or about October 19, 1959;  
(date)
4. You were on April 17, 1968 convicted in the U.S. District Court for  
the Southern District of New York for unlawfully, wilfully and knowingly  
receiving, concealing, selling and facilitating the transportation,  
concealment and sale of opium and conspiracy to do so, in violation  
Title 21, United States Code, Sections 173 and 174.

AND on the basis of the foregoing allegations, it is charged that you are subject to deportation pursuant to the following provision(s) of law: Section 241(a)(11) of the Immigration and Nationality Act, in that, you have been convicted of a violation of any law or regulation, governing or controlling the taxing, manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, or exportation, or the possession for the purpose of manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, or exportation of any of the drugs described therein: Unlawfully and knowingly receiving, concealing, selling and facilitating the transportation, concealment and sale of opium and conspiracy to do so in Violation of Title 21, United States Code, Sections 173 and 174.

WHEREFORE, YOU ARE ORDERED to appear for hearing before a Special Inquiry Officer of the Immigration and Naturalization Service of the United States Department of Justice at the Federal Reformatory for Women, Alderson, West Virginia on November 12, 1969 at 1:30 p. m. and show cause why you should not be deported from the United States on the charge(s) set forth above.

Dated: September 3, 1969

cc: Warden, Fed. Ref. for Women  
Form I-221 Alderson, W.Va.  
(Rev. 3-30-67)

IMMIGRATION AND NATURALIZATION SERVICE

Paul E. Benson  
(signature and title of issuing officer)  
PAUL E. BENSON, ACTING OFFICER IN CHARGE  
Pittsburgh, Pennsylvania  
(City and State)

(over)



A12 084 054  
January 13, 1969

I wish to apply for temporary  
withholding of deportation to Republic  
of China or Formosa because I believe  
I would be persecuted there because of  
religion and political opinion.

Viola E. Brown

Respondent stated she does not have filing fees and she  
sends her money to her children. I permitted filing  
of this application without fee.

Quintus  
SIO

11/13/69

EX-4 (11) 11/13/69

A-4

UNITED STATES DEPARTMENT OF JUSTICE  
Immigration and Naturalization Service

NOV 8 1971

File: A12 084 054 - Pittsburgh, Pa.

In The Matter Of )

VIOLA CHOW )

IN DEPORTATION PROCEEDINGS )

Respondent )

CHARGE:

I & N Act - Section 241(a)(11), convicted of violation of  
laws governing taxing, etc. of drugs: opium,  
and conspiracy to do so;

APPLICATION: Temporary withholding of deportation to the Republic  
of China on Formosa

IN BEHALF OF RESPONDENT:

Lawrence E. Morhous  
Alderson Legal Assistance Program  
Washington & Lee Law School  
Lexington, Virginia

IN BEHALF OF SERVICE:

Paul E. Benson  
Acting Trial Attorney  
Pittsburgh, Pennsylvania

DECISION OF THE SPECIAL INQUIRY OFFICER

Respondent is a 34-year-old divorced female, native and citizen of China,  
who entered the United States at Longview, Washington in diplomatic status  
on October 19, 1959. She subsequently had her status adjusted to that of  
a permanent resident.

On April 17, 1968 respondent was convicted in the United States District  
Court for the Southern District of New York for unlawfully, wilfully and



knowingly receiving, concealing, selling and facilitating the transportation, concealment and sale of opium and conspiracy to do so, in violation of Title 21, United States Code, Sections 173 and 174. As a result of this conviction, respondent was accorded a deportation hearing and charged with being deportable under Section 241(a)(11) of the Immigration and Nationality Act, citing in support thereof respondent's aforesaid conviction. Respondent conceded that the allegations of fact in the order to show cause were true and also that she was deportable as charged. Although respondent had received most of her schooling in Formosa (Taiwan) and arrived here with her former husband on a diplomatic passport from the Republic of China on Formosa, she requested that her deportation in the first instance be directed to Hong Kong. When she was informed that if Hong Kong would not accept her, her deportation would be directed to the Republic of China on Formosa, respondent claimed the benefits of Section 243(h) of the Act, claiming that she would be persecuted because of her religion and political opinion were she deported to Formosa (Taiwan).

On October 14, 1971 respondent was accorded a continued hearing at which time she was to have submitted any evidence or proof of her claim that she would be subjected to persecution because of race, religion or political opinion were her deportation directed to Formosa. She was unable to submit even a scintilla of evidence to support her claim.

Obviously the mere self-serving statement that she would be subject to persecution were she ordered deported to Formosa (Taiwan) is not evidence.

On the basis of all the evidence adduced, which consists solely of respondent's self-serving uncorroborated statements, I hold that she has failed to establish that she would be persecuted because of race, religion or political opinion if deported to Formosa (Taiwan). Her application for withholding of deportation to Formosa on that ground will, therefore, be denied.

I hereby enter the following orders:

ORDER: IT IS ORDERED that the respondent be deported from the United States to Hong Kong on the charge contained in the order to show cause.

IT IS FURTHER ORDERED that if the aforementioned country advises the Attorney General that it is unwilling to accept the respondent into its territory or fails to advise the Attorney General within three months following original inquiry whether it will or will not accept the respondent into its territory, the respondent shall be deported to the Republic of China on Formosa (Taiwan).

IT IS FURTHER ORDERED that the application for temporary withholding of deportation to the Republic of China on Formosa (Taiwan) under Section 243(h) of the Immigration and Nationality Act be and the same is hereby denied.

Beatrice Grace Davis  
Special Inquiry Officer



NOTICE OF APPEAL TO THE BOARD OF IMMIGRATION APPEALS

SUBMIT IN TRIPLICATE TO:

IMMIGRATION AND NATURALIZATION SERVICE  
20 WEST BROADWAY

NEW YORK, N. Y. 10007

ATTENTION: SPECIAL INQUIRY UNIT

Fee Stamp

\$25

FEE PAID

No. 225-1

Immigration and Naturalization Service

Philadelphia, Pa. M & F

Date 5-20-71 Verified by RPH

In the Matter of:

VIOLA CHOW

File No. A12 084 054

1. I hereby appeal to the Board of Immigration Appeals from the decision, dated November 8, 1971 in the above entitled case.

2. Briefly, state reasons for this appeal. (Continued on attached sheet "A")

A. I am primarily concerned with welfare of my teen-age sons who were born reared in the U.S. In the divorce action between my husband and myself I acquired custody of our sons. If deported, the children will have to go with me, and they are ill-equipped to adjust to the stark cultural differences which such a move would involve. They are now 13 and can neither speak nor write Chinese well enough to communicate in that language..

B. At time my husband and I were granted a permanent residence in this country (1961) the government in Formosa was advised of our choice. Now, if criminally deported, I will be at a distinct disadvantage in seeking employment in my own country. I base this, plus the alleged assumption that any in a criminal matter has authority to make such a determination on a fundamentally civil matter. Real possibility of physical persecution, upon my knowledge of a case several years ago which I read about in a

3. I do (do) (do not) desire oral argument before the Board of Immigration Appeals in

Washington, D. C.

4. I am (am) (am not) filing a separate written brief or statement.

Wilfred J. Ritz  
Signature of Appellant (or attorney or representative)

Wilfred J. Ritz

(Print or type name)

Law School, Washington & Lee Univ.  
Lexington, Virginia 24450

Address (Number, Street, City, State, Zip Code)

November 17, 1971

Date

IMPORTANT: SEE INSTRUCTIONS ON REVERSE SIDE OF THIS NOTICE

Continuation of Question "2."

Chinese newspaper. The man in question had murdered a person in the U.S. for which he served a ten year sentence in this country. Upon release, he was deported and subsequently forfeited all civil rights (voting privileges, etc.) and was immediately sentenced again to 10 years in Formosa because of his criminal deportation.

- C. My own family now reside in the U.S. and I have no interest or ties in Formosa. My original home was on the mainland of China, but I had lived in Formosa about 10 years before coming to the U.S. My husband and I following his tour of duty at the Chinese Embassy in Washington, D.C. chose to remain in this country and requested permission to do so from the Immigration and naturalization service.
- D. Such permission having been granted, it seems entirely contradictory that the same service now deems deportation necessary. I feel that I have paid for my crime against the United States by serving a 5 year no parole sentence, to make deportation a further condition of my accountability is, in my opinion, double punishment, as well as a totally unwarranted penalty against my sons who are not only innocent but native born American citizens.

I can see no just rationale for holding them responsible for my mistake. On the other hand, I am their natural mother and I have legal custody of them. I cannot conceivably equate my offense against the state with being an unfit mother.

I earnestly pray that the officials concerned with determining my fate and that of my sons, give careful and serious deliberation to the please herein offered.



UNITED STATES DEPARTMENT OF JUSTICE  
Board of Immigration Appeals  
and  
Immigration and Naturalization Service

NOTICE OF ENTRY OF APPEARANCE AS ATTORNEY OR REPRESENTATIVE

In re:

VIOLA CHOW

DATE: March 1, 1972

FILE NO.: A12 084-054

I hereby enter my appearance as attorney for (or representative of) the person whose name appears immediately below, and my appearance is made at his (her) request.

NAME Viola Chow

ADDRESS (Apt. No.) (Number and Street) (City) (State) (Zip Code)  
6-L 50 Bayard Street, New York, New York

Check applicable item(s) below.

☒ 1. I am an attorney and a member in good standing of the bar of the Supreme Court of the United States or of the ~~High Court~~ of the following State, territory, insular possession, or District of Columbia \_\_\_\_\_ and am not under a court or administrative agency order suspending, enjoining, restraining, disbaring, or otherwise restricting me in practicing law.  
(Name of court)

☐ 2. I am an accredited representative of the following named religious, charitable, social service, or similar organization established in the United States and which is so recognized by the Board: \_\_\_\_\_

☐ 3. I am associated with \_\_\_\_\_ the attorney of record who previously filed a notice of appearance in this case and my appearance is at his request. (If you check this item, also check item 1 or 2, whichever is appropriate.)

☐ 4. Others (Explain fully.) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature

*Irving E. Field*

Complete Address

310 Madison Avenue  
New York, New York 10017

NAME-Type or print IRVING E. FIELD

Telephone number (212) MU 7-5018

75

UNITED STATES DEPARTMENT OF JUSTICE  
IMMIGRATION AND NATURALIZATION SERVICE  
BOARD OF IMMIGRATION APPEALS

-----x

- In the Matter of -

File No. A12 084 054

VIOLA CHOW,

In DEPORTATION  
PROCEEDINGS

Respondent.

-----x

FACTS

THE IMMIGRATION AND NATURALIZATION  
SERVICE INSTITUTED PROCEEDINGS FOR  
DEPORTATION AGAINST VIOLA CHOW, A  
PERMANENT RESIDENT (TRANSCRIPT p.6),  
BASED ON A CONVICTION OF A CRIMINAL  
CHARGE (TRANSCRIPT pp.1 & 2).

The hearing was conducted at the Federal Reformatory  
for Women, Alderson, West Virginia, where the respondent was  
then confined. The hearing was commenced before Special In-  
quiry Officer Daniel J. Schull on November 13, 1969 at the  
Federal Reformatory. The trial attorney present was Newton  
T. Jones.

The hearing was continued to April 28, 1971, but the  
record thereof could not be transcribed and a new continued  
hearing was held on October 14, 1971. At this time another  
Special Inquiry Officer, Dr. Beatrice Grace Davis conducted  
the continued hearing on October 14, 1971.

At the initial hearing, the respondent was not rep-



resented by counsel. At the continued hearing, the respondent was represented by a Law School student (Transcript, p.12).

POINT I

THE CONTINUED HEARING IS JURISDICTIONALLY DEFECTIVE SINCE IT DOES NOT COMPLY WITH SECTION 242.8(b) OF TITLE 8 OF THE CODE OF FEDERAL REGULATIONS (22 F.R.9797, AS AMENDED AT 26 F.R.12111, 26 F.R.12242); 32 F.R.901

The record of the continued hearing before Special Inquiry Officer Beatrice Grace Davis is completely silent as to the reason why a new Special Inquiry Officer conducted the continued hearing.

We respectfully submit that the record should contain a statement as to whether there has been a substitution or replacement of the Special Inquiry Officer so that this Board can determine whether the withdrawal and substitution of the Special Inquiry Officer was in compliance with the regulations.

The record is also completely silent with regard to the last sentence of Section 242.8(b), which states:

\*\*\*\* The new special inquiry officer shall familiarize himself with the record in the case and shall state for the record that he has done so."

The record is completely barren of any such statement.

This regulation was issued by the Attorney General pursuant to Section 1252(b), which provides that deportation

proceedings before a Special Inquiry Officer shall be in accordance with such regulations. Thus the said regulation has the force and effect of a statutory prerequisite for jurisdiction.

The failure of the record to contain such a statement by the Special Inquiry Officer is, we respectfully submit, a jurisdictional defect which vitiates the entire proceeding and the deportation order issued therein.

#### POINT II

THE RESPONDENT IS AFFORDED BOTH  
PROCEDURAL AND SUBSTANTIVE DUE  
PROCESS AND PROTECTION UNDER BOTH  
THE EIGHTH AND FOURTEENTH AMEND-  
MENTS TO THE CONSTITUTION.

A resident alien has the same protection for his life, liberty and property under the due process clause as is afforded to a citizen. Galvan v. Press, 347 U.S. 522, 530, 74 S.Ct. 737, 742. Cermeno-Cerna v. Farrell, 291 F.Supp. 521.

Imprisoned convicts also have the protection of the due process and equal protection clauses of the Fourteenth Amendment. (Bethea v. Crouse, 417 F.2d 504, 507, 508; Smith v. Schneckloth, 414 F.2d 680, and cases therein cited; Jackson v. Bishop, 404 F.2d 571, and cases therein cited.



POINT III

THE RESPONDENT WAS DENIED  
BOTH PROCEDURAL AND SUB-  
STANTIVE DUE PROCESS AND  
EQUAL PROTECTION GUARAN-  
TEED BY THE FOURTEENTH  
AMENDMENT TO THE CON-  
STITUTION

The original hearing and continued hearings were all held at the Federal Reformatory for Women, Alderson, West Virginia. At the first hearing, the respondent was not represented by counsel. There is no record of the second hearing. At the third hearing, the respondent was represented by a law school student.

We respectfully submit that the holding of the hearings at Alderson Reformatory was a denial of both procedural and substantive due process. Respondent had no freedom of movement whatever. She could not make any personal effort to obtain adequate legal representation. The hearings were held at a considerable distance from her house in New York City where she might have been able to obtain a lawyer, or obtain proof under Section 243(h). It has been held that a deportation hearing conducted at a considerable distance from a person's house would deprive him of a fair hearing. (La Franca v. Immigration and Naturalization Service, C.A. N.Y. 1969, 413 F. 2d 686). There was no compelling urgency for holding the hearings in jail. The respondent could not have been deported in any event until her release from prison. (Section 1252 subd. (h), U.S. Code)

Respectfully submitted

IRVING E. FIELD  
Attorney for respondent (Appellant)



BEFORE THE BOARD OF IMMIGRATION APPEALS

Oral Argument: April 26, 1972

In Re: VIOLA CHOW

File: A-12084054

Board: Mr. Roberts, Mrs. McConnaughey  
and Mr. Maniatis

Heard: For Respondent: Irving Field, Attorney  
310 Madison Ave.  
New York, New York 10017

For Immigration Service: David L. Milhollan  
Appellate Trial Attorney

Request: Remand

Attorney: I shall first address myself to a procedural question, and that is the failure of the substituted special inquiry officer to note on the record that she had familiarized herself with the record, and so stated for the record. I believe this is a jurisdictional defect. The regulations promulgated by the Attorney General requires this, and that particularly is regulation 242.8(b) of Title 8 CFR. This Board has on prior occasions held that the regulations of the Attorney General are binding on the Board, and that was in Matter of Tzimas, a 1962 case, decided on Dec. 10, 1962 by this Board (Int. Dec. 1251). That is the first question.

The second question is.....

Chairman: Before you proceed can I ask you a question, or will it bother you?

Attorney: Please do.

Chairman: We agree the regulations are binding upon the Service and on us where they relate to us, but how was your client prejudiced by this deviation? Is there anything to indicate Miss Davis was not familiar with the record?

Attorney: This I raise in connection with the first portion of that particular section, in which a special inquiry officer may be superseded only under special circumstances, and that is not present in the record cited. There is no statement, there is no reason given or statement made anywhere in the record why the first special inquiry officer was substituted, and I think a substitution can be arbitrary or may be arbitrary, I think it must be in accordance with the law and the regulations promulgated by the Attorney General.

I don't know how my present client would have fared with another special inquiry officer, which brings me to the third thing.....

Chairman: Before you get to the third question let me ask you about the second. We here are familiar with the special inquiry officers, their number is limited, we know, we are familiar with the situation in this district, we know where they sit. Mr. Schrull was the special inquiry officer there and after he retired he was succeeded by Miss Davis, at least we are aware of that as a matter of fact. I don't know if you are, but if that is the fact, would that undermine the fairness of these proceedings? Or would that be a due process violation in any meaningful sense?

Attorney: I think it is a jurisdictional question, and I was going to say, I have never raised any minor or petty questions or technical questions before this Board before, or before the Immigration Service. However, I must now come to my third and main objection here, which is the holding at the penitentiary of the hearing at which respondent first was not represented by an attorney, at the first hearing. Secondly there is no record of the second hearing whatever, and thirdly she was represented by law-school student at the third hearing.

She was in the penitentiary, was far from home, had no opportunity to prepare her defense, and in this case her defense would have been availability of Section 243(h), which I state to this Board is a serious question here, is subject to proof, there is proof available of this, and she should have been afforded an opportunity under the protection of the constitution to prepare her defense. I am aware of decisions which would state that a hearing can be held at a penitentiary; however I don't think that would apply to this case. First I can see no reason why the Service should have been hasty, the regulations and the Act prohibit deportation until she gets out of the penitentiary; the hearing could have been held a short time after she got out. There was nothing in the record to indicate she would attempt to leave or secrete herself, and she would have had an opportunity at least to try to look for an opportunity to do that for an attorney,

With all due modesty she was able to find me, and I was able to represent her for a nominal fee. I flatter myself to state she is getting good representation which she did not have at the hearing. I don't think it is fair to require somebody to be represented by a law-school student, it is apparently abhorrent to all concepts of fair play and constitutional rights and justice, and I might add both a felon and an alien are protected by the constitution, and the Supreme Court has so said.

With regard to holding the hearing at a jail, first the atmosphere I don't think is conducive to a proper hearing. I don't think any hearing should be held in jail, this is my personal view. Secondly, there is the question of preparing her defense to which she is entitled, and then the ability to see people and do things in her own defense.



Chairman: Let me ask you this, I gather that deportability as such is not challenged, it is merely the, shall I say, affirmative application for Section 243(h) relief which you are pressing primarily? In other words it is your thesis that in order to be able to carry your burden of proof, or respondent's burden of proof, she should have been in a position where she could have access to witnesses and so on?

Attorney: And newspapers and documents, yes, which she should not, did not have of course.

Chairman: And it is that fact you feel distinguishes this case from many others in which hearings held in a place of detention have been sustained as fair?

Attorney: I don't think, I doubt whether that would be sustained any more. There is a recent case in the 2nd Circuit in New York in which the Circuit Court of Appeals said that a hearing more than 15 miles away from a person's place of residence would be unfair, put an undue burden on the person.

Chairman: A deportation case was that?

Attorney: Yes.

Chairman: Is that very recent?

Attorney: I cite it in my memorandum, that is the LaFranca case. I have an excerpt from the case if I may read it, and I think this Board will find that everything I complain about was used in reverse to substantiate the finding of the Circuit Court of Appeals here. They say there is no clear mandate in either the statute or the regulations as to where a hearing should be held. Here the hearing was held in New York City instead of at a distance of 15 miles. Petitioner resided in Jersey City, where arrested and the place of hearing was easily accessible to him. He was represented by competent counsel.

At the initial hearing he was accompanied by a relative who was also an attorney. Petitioner was able to post bond. When the hearing was resumed 3 days later he waived any objection to the place of hearing. This is a matter of venue rather than jurisdiction and plaintiff could properly waive any right to have the hearing in the district of his residence or place of arrest. Of course here there was no waiver whatever by the accused or by respondent as to place of hearing, she was not asked.

Chairman: You think that case establishes the proposition that a hearing held more than 15 miles from the alien's place of residence is invalid?

Attorney: It doesn't say that but the headnote says that, and I have a feeling the court would so hold, maybe not 15 miles but it is a distance from the person's place of residence.

Chairman: Let me ask you this, is it your position that if we were to demand, you as her attorney would present evidence on the Section 243(h) issue, which could not have been presented at the prior hearing because of counsel there?

Attorney: That is correct.

Chairman: Do you know now the nature of the evidence that you would present?

Attorney: I already have the name of a case where this occurred, with the time and place, and that in fact <sup>this</sup> did occur as she said before, before the special inquiry officer, I have the name of the person that happened to.

Chairman: What happened to?

Attorney: The person was imprisoned merely because he was sentenced to imprisonment in the U.S. He was deported and immediately sentenced without charges because of that conviction here, in Taiwan.

Chairman: Is it your position then that if the government of Taiwan imposes some sort of a sanction upon its nationals who have engaged in conduct that is disapproved of by them, in another country, you feel that is persecution within the meaning of Section 243(h)?

Attorney: Not only is this persecution within 243(h), but I also feel that this would be a cruel and inhuman punishment visited by our government on the prisoner, the person before the Immigration Department, under the sanctions of the 8th Amendment. It would be cruel and inhuman punishment to deport him knowing he is going directly to jail from here when he has already served the sentence for the crime here.

Chairman: How about the many cases which hold that deportation is not a punishment and therefore it doesn't violate the 8th Amendment?

Attorney: I can only point to the Supreme Court case which indicates to the contrary. It says that the right not to be deported is a very valuable right, and that I think it indicates to the contrary, I have seen the case, it is a Supreme Court case, I don't have it here but I will be glad to supply it to the Board.

Chairman: We know the Supreme Court has stated in many instances that deportation has very grave effects, but thus far I am not aware of any case where they have held it is punishment, and my recollection is there are numerous cases holding that since deportation is not punishment for a crime, it doesn't collide with the 8th Amendment.



Attorney: This case in the Supreme Court, although it doesn't say so explicitly, I would rely on it in going to court.

Chairman: You are not thinking of Woodby, are you?

Attorney: No, I had the citation but I didn't want to take the time.

Mr. Milhollan: I just received the respondent's brief and I have tried to give it what thought I could without checking any further than that. It seems the point raised with regard to the special inquiry officer is a procedural defect, at best, and there is no indication whatsoever that of it, that the respondent was prejudiced in any way. Of course they did proceed with the hearing with the representative there representing her, and I just fail to see the argument that this is a jurisdictional defect which requires an entirely new hearing. No indication at all that respondent was in any way prejudiced.

Chairman: As a matter of curiosity though, I was wondering why the Service does rush into holding hearings in a jail, when they can't possibly deport the alien until released. Wouldn't it be better practice to wait at least until the person has been released, and can have access to counsel of her own choice, and witnesses and so on?

Mr. Milhollan: It is my understanding, and again I didn't have an opportunity to check this out thoroughly, but it is my understanding, of course of actual deportation and the preparation for deportation does take some time, but it is my understanding that the Service wants to proceed and be ready to deport a deportable alien at the time they are released from prison, and that is the reason they do go ahead and proceed. But once again, I would simply indicate that there appears to be no prejudice to the respondent, she made no claim or her representative made no claim that they couldn't have access to witnesses or various papers that would have been available at some other place.

Of course the case is she was incarcerated due to her own actions, but counsel apparently brings up the matter of one alien he refers to, and he refers to one case, perhaps there are others, but he has not mentioned them, where an individual may have been in prison for whatever reason we don't know. If that is the only evidence of persecution that he is talking about as far as 243(h) is concerned, I don't think that is a basis or proof that deportability is barred. The matter of 243(h) I thought was gone into quite extensively at the hearing, and it appeared quite clear that she just couldn't establish a 243(h) case. Unless the Board has any questions, that is all I have.

Chairman: I was just looking at the jacket on this administrative record. I noticed it was received here Dec. 28, 1971. Now that was before the

State Department published its notice with respect to the handling of asylum cases, and while it is not germane to these proceedings, I was wondering, since I know that the Service does honor such requests, and at least to the extent of making inquiry, if we were to dismiss this appeal, am I correct in assuming that the Service would still make the needed inquiry with respect to asylum?

Mr. Milhollan: In this case I would say yes.

Chairman: That is not an issue that confronts us as a Board, that is a separate issue from Section 243(h) with which we are confronted.

Attorney: First I think this has become now a vicious circle. The Service says she could have produced proof that the representative she had at the hearing should have said this or should have said that, and I contend that if she had proper representation at the hearing, if she could have gone out and gotten an attorney, she would have made these objections, and I certainly would have made them if I had been there. I did want to raise an entirely new question before the Board, it was not presented on the notice of appeal but I think I should call it to your attention.

It has now become the official U.S. policy, according to my interpretation of what I read in the papers, that Taiwan and Red China are one country. I have read this repeatedly, that the U.S. recognizes that Taiwan and China are one; that they are not separate entities. Taiwan is no longer in the U.N., and if they are one, we certainly can urge 243(h) under another ground now, that she is opposed to the Communist form of government, and she would be persecuted if she were to be deported there. I think we are entitled to raise this question. I think the hearing took place before that announcement was made by President Nixon.

Chairman: Mrs. McConnaughey points out the deportation order specified Hong Kong as the place of deportation in the first instance, and Taiwan only if she were not received by Hong Kong. Now if she actually were deported to Hong Kong, that would moot any question with respect to Taiwan, would it not?

Attorney: Yes I would abandon my appeal if the second designation were removed, if Taiwan were removed I would withdraw my appeal now.

Chairman: But then this statement that you make comes as a surprise to me as an individual, I can't speak for the other Board Members, but I don't recall any statement on the part of this government identifying the government of Taiwan with the Red Chinese Republic.

Attorney: I can supply the clippings from the New York Times if I may.



though I think it is collateral to the issues. It might be raised on the request of a new hearing but I think under all concepts of justice she should be granted a new hearing anyhow where she can be adequately represented. If I may go off the record?

Chairman: I think it would be better if we didn't have anything off the record.

Attorney: This just concerns my fee. (At this time there are off-the-record remarks by attorney).

Chairman: Actually what you said off the record could very well have been stated on the record, and it does you credit, but it troubles me a bit to have an allegation made that an alien was poorly represented merely because she happened to be represented by a law student. As you know, more and more law students are entering into this area, and it doesn't necessarily follow that a law student may not do an adequate job. We have seen any number of cases in which law students have really done a bang-up job. I gather your criticism is that this law student didn't do what you would have done had you been counsel at that time?

Attorney: Not only I but any experienced attorney.

Chairman: Because I was going to say we have seen many cases in which experienced attorneys have done no more than this.

Attorney: At least then she would have had the opportunity of getting somebody to represent her who would make his own mistakes.

Mrs. McConnaughey: Are there decisions in which the Service has been criticized for not having the case processed and the alien ready to go when he gets out of the penitentiary, or are those complaints simply made to us by aliens? I seem to remember cases in which the government has been criticized for holding an alien after he served his sentence.

Mr. Milhollan: I know of no criticism as such but it seems to me there was a habeas corpus action instituted on that basis.

Mrs. McConnaughey: More than one.

Mr. Milhollan: Yes, because they were being held by the Service, and it seems to me I have come across instances where jail sentences have been suspended or the alien has been released prior to termination of the entire sentence on condition he be deported.

Chairman: Aliens have been paroled for deportation.

Mr. Milhollan: Yes.

Attorney: That is provided specifically by the statute, and I do wish to add that in this case the alien was required to post a bond, otherwise she would have been incarcerated again. I must point to this case to show there is no need for haste. There are a number of procedural ways that the deportation could be delayed, and if it can't be undertaken anyhow until she gets out, I can't see how the Service can be prejudiced by waiting.'

Chairman: I think I can understand the Service point of view without necessarily saying it is correct, but <sup>we</sup> would have to close our eyes not to recognize that even after there has been a formal hearing under 242(b), an appeal from a deportation order to this Board and a decision by this Board under Section 106 of the Act, aliens have ready access to the Court of Appeals with an automatic stay of deportation, and the way the courts are backlogged, even in the most frivolous case they can sometimes delay actual deportation for quite awhile. So I can understand the Service wanting to be ready with an executable order of deportation when the alien is ready to be released from jail. Somewhere along the line I suppose there must be an accommodation, and I don't suppose it is ours to make. I am just wondering as to the validity of your thesis that as a general proposition a hearing held while the alien is incarcerated, offends due process.

Attorney: Well, we have another situation in this case, and it is in the record, where the alien had no money, it appears in the record, the \$25 fee was waived. I could understand perhaps where a wealthy alien were imprisoned, he could probably conduct his defense from jail. <sup>High</sup> class and high-powered attorneys and do it that way, but I go back to my original thesis, as an attorney I am opposed to conducting hearings in jail, I think it is degrading to the person and degrading to the Service.

Chairman: If there is nothing further we will take this under advisement.

Attorney: Thank you.

mb





Address Reply to the  
Division Indicated  
and Refer to Initials and Number

UNITED STATES DEPARTMENT OF JUSTICE  
BOARD OF IMMIGRATION APPEALS  
WASHINGTON, D.C. 20530

May 25, 1972

CHOW  
A12 084 054

Irving E. Field, Esquire  
Siegel & Field  
310 Madison Avenue  
New York, New York 10017

Dear Sir:

Reference is made to your interest in the above  
case.

For your information, there is enclosed herewith  
copy of the decision and order of the Board of Immigration  
Appeals.

Sincerely yours,

*Marianne B. McConnaughey*

Marianne B. McConnaughey  
Acting Chairman

24

A-24

UNITED STATES DEPARTMENT OF JUSTICE  
Board of Immigration Appeals

File: A12 084 054 - New York

In re: VIOLA CHOW

MAY 25 1972

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Irving E. Field, Esq.  
Siegel & Field  
310 Madison Avenue  
New York, New York 10017  
(Brief filed)

ON BEHALF OF I&N SERVICE: David L. Milhollan  
Appellate Trial Attorney

ORAL ARGUMENT: April 26, 1972

CHARGES:

Order: Sec. 241(a)(11), I&N Act (8 U.S.C. 1251  
(a)(11)) - Convicted of violation of  
laws governing taxing, etc. of drugs:  
opium, and conspiracy to do so

Lodged: None

APPLICATION: Remand

This is an appeal from a decision of a special inquiry officer which finds the respondent deportable as charged and orders her deportation to Hong Kong in the first instance and alternatively to the Republic of China on Formosa (Taiwan). For reasons set forth below we will remand this matter to the special inquiry officer for further proceedings.



The record relates to a 35-year-old female, native and citizen of China, who entered the United States at Longview, Washington in diplomatic status on October 19, 1959. She subsequently had her status adjusted to that of permanent resident. On April 17, 1968 respondent was convicted in the United States District Court for the Southern District of New York of unlawfully, wilfully and knowingly receiving, concealing, selling and facilitating the transportation, concealment and sale of opium and conspiracy to do so in violation of Title 21, United States Code, sections 173 and 174. As a result of the conviction, respondent was accorded a deportation hearing and charged with being deportable under section 241(a)(11) of the Immigration and Nationality Act. Respondent conceded deportability. She was ordered deported to Hong Kong. The special inquiry officer denied her application for temporary withholding of deportation to the Republic of China on Formosa under section 243(h) of the Act.

Counsel's oral argument contended that he has new evidence that the respondent will be subject to persecution if deported to the Republic of China on Formosa.

We have carefully considered the record, counsel's brief and oral argument. Upon due consideration, we conclude that the proceeding should be remanded to the special inquiry officer to afford the respondent an opportunity to apply for withholding of deportation to the Republic of China on Formosa, and to support her claim that she will be subject to persecution if deported there.

ORDER: It is ordered that this matter be remanded to the special inquiry officer for the introduction of new evidence material to the issue of the respondent's eligibility for relief under section 243(h) of the Act.

Acting Chairman

UNITED STATES DEPARTMENT OF JUSTICE  
Immigration and Naturalization Service

MATTER OF VIOLA CHOW

FILE A12 084 054

IN DEPORTATION PROCEEDINGS

TRANSCRIPT OF HEARING

Before Special Inquiry Officer Francis J. Lyons

Hearing held on November 25, 1972

at 20 West Broadway, New York, N.Y.

Recorded by Dictabelt

Transcribed by Bonnie Glatzer

Official

Interpreter S. C. Szeto

Language Mandarin

IN BEHALF OF SERVICE:

Nathan Levine, Esq.

Trial Attorney

New York, New York 10007

Station

IN BEHALF OF

Irving E. Field, Esq.

310 Madison Avenue

New York, New York 10017

I hereby certify that to the best of my knowledge and belief the following pages numbered One  
through eleven are a complete and accurate transcript of the above-described hearing.

Francis J. Lyons  
Signature  
Immigration Judge  
Title  
AUG 1 6 1973  
Date



1 IMMIGRATION JUDGE TO RESPONDENT:

2 Q What is your name?

3 A Cheh Cheng Yang Chow.

4 Q Do you also use the name Viola Chow?

5 A Yes.

6 Q Do you wish to have Mr. Field represent you as your attorney in  
7 this deportation proceeding?

8 A Yes.

9 IMMIGRATION JUDGE: Mr. Field, are you ready to proceed?

10 MR. FIELD: Do you want me to file my notice of appearance?

11 IMMIGRATION JUDGE: I have a notice of appearance. If you want to  
12 give me an additional one.

13 MR. FIELD: Here it is.

14 IMMIGRATION JUDGE: Thank you.

15 IMMIGRATION JUDGE TO RESPONDENT:

16 Q Mrs. Chow, would you stand and raise your right hand please. Do  
17 you solemnly swear that all the testimony you give in this  
18 proceedings will be the truth, the whole truth and nothing but  
19 the truth so help you God?

20 A I do.

21 IMMIGRATION JUDGE: Fine. Mr. Field, as you know, there have been  
22 hearings in this proceeding before two other Special Inquiry  
23 Officers in the southeast region. Now, the case has been re-  
24 opened by the Board. I have familiarized myself with the en-  
25 tire record. As you also know, I am regularly assigned in  
26 New York. The prior Special Inquiry Officer, Miss Davis, is

- 1 -  
TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 a Special Inquiry Officer in the southeast region. I believe she  
2 is down in Washington and is not available in New York I take it  
3 there is no objection to my taking jurisdiction.

4 MR. FIELD: None at all.

5 IMMIGRATION JUDGE: Fine. Now, is there any change in relation  
6 charge, the allegations and the charge? Do you concede  
7 factual allegations as set forth in the Order to Show Cause.

8 MR. FIELD: Yes sir.

9 IMMIGRATION JUDGE: And deportability on the charge?

10 MR. FIELD: Yes sir.

11 IMMIGRATION JUDGE: Then the only question is that opened by the Board  
12 in its remand order to afford you the opportunity to proceed  
13 and present evidence in support of the request for withholding of  
14 deportation to Taiwan which will be the alternate place, was the  
15 alternate place named in the original order by Miss Davis. Do  
16 you wish to proceed on that?

17 MR. FIELD: I have additional grounds prepared as well.

18 IMMIGRATION JUDGE: Do you have any evidence to present?

19 MR. FIELD: I have additional grounds to urge and additional  
20 evidence.

21 IMMIGRATION JUDGE: Well, suppose you present the evidence and the  
22 grounds you can present in writing.

23 MR. FIELD: When will I present the grounds the writing?

24 IMMIGRATION JUDGE: Suppose you present the evidence first and then I'll  
25 come to the question of time for whatever kind of kind of brief  
26 you want to present.

- 2 -  
TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service



1 MR. FIELD TO RESPONDENT:

2 Q Mrs. Chow, are you a permanent resident?

3 A Yes.

4 MR. LEVINE: I'm not fully aware of the import of that question.

5 IMMIGRATION JUDGE: Well look, are you - you didn't object, make any  
6 objection.

7 MR. LEVINE: May I object in that the import of that question  
8 is unclear.

9 IMMIGRATION JUDGE: No you may not. Go ahead. I would like to point  
10 out to you that there is a record. I'm familiar with the record  
11 and it shows that she was adjusted under Section 13 of the 1957  
12 act to a permanent resident, prior to her conviction.

13 MR. FIELD: I will make it as brief as possible.

14 IMMIGRATION JUDGE: I mean I have all the background that is already  
15 in the record so you can go forward from there please. Go ahead.

16 MR. FIELD TO RESPONDENT:

17 Q How long have you been a permanent resident of the United States?

18 A I became a permanent resident since May 1961.

19 Q Do you have any children?

20 A Yes.

21 MR. FIELD: May I apologize, Mr. Lyons, I just want to present  
22 these facts very briefly and then I'll go on to...

23 IMMIGRATION JUDGE: All right but....

24 MR. FIELD: I don't know - I have to go back over the record  
25 to see whether anything in particular was stated in the record  
26 or not and I think it would be more expeditious this way.

- 3 -  
TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service



1 IMMIGRATION JUDGE: All right. Go ahead.  
2 MR. FIELD TO RESPONDENT:  
3 Q How old are your children?  
4 A I have two children who are twins. They are fourteen years of  
5 age.  
6 Q Were they both born in the United States and are they both citi-  
7 zens?  
8 A Yes, they both were born in Washington in 1958.  
9 Q Have they lived virtually all their life in the United States?  
10 A ---  
11 IMMIGRATION JUDGE: They have lived all of their life in the United  
12 States except for a brief visit in Formosa about 1959.  
13 MR. FIELD: I'll accept that. I withdraw the question.  
14 MR. FIELD TO RESPONDENT:  
15 Q Your children which - do you have custody of them?  
16 A Yes.  
17 Q Would it be an extreme hardship for your children if they were  
18 to accompany you either to Hong Kong or Taiwan?  
19 A Yes.  
20 Q Are you now employed in the United States?  
21 A Yes.  
22 Q Where are you employed?  
23 A I am employed by the First National City Bank.  
24 Q How much is your salary?  
25 A \$75 per week.  
26 Q What type of work do you do?

1 A On a computer.

2 Q Have you had any difficulty with the law or with the police other  
3 than the one offense which is the subject of this proceeding?

4 A No.

5 Q Has your probation officer offered to give you a letter of re-  
6 commendation if you so desire it?

7 A Yes.

8 Q If you are deported to Taiwan, will you be subject to persecution?

9 A Yes.

10 Q What do you believe regarding the admission of Red China to the  
11 United Nations?

12 A I agree and support the idea of admitting the Communist China to  
13 the United Nations.

14 Q Are you a Communist?

15 A No.

16 Q What are your beliefs with regard to trade and commerce between  
17 the United States and Red China?

18 A I agree and support the policy of the United States in trading  
19 with Communist China.

20 Q What are - do you support the political convictions of the  
21 President of the United States and the executive departments of  
22 the United States in willingness to recognize Red China politi-  
23 cally?

24 A ---

25 MR. LEVINE: I object to the question on the grounds...

26 IMMIGRATION JUDGE: Overruled.



1 MR. FIELD TO RESPONDENT:

2 Q ---

3 A Yes, I support their ideas.

4 Q Do you believe that there should be free interchange of people,  
5 both political and scientific, between Red China and the United  
6 States?

7 A Of course.

8 Q And are these honestly your political beliefs?

9 A Yes.

10 Q How long have you resided in the United States?

11 A Sixteen years.

12 Q Before - as a supporter of these political beliefs you have just  
13 expressed, do you allege that you will be persecuted if you are  
14 deported to Taiwan?

15 A Yes because the government on Taiwan will never agree with what  
16 I agree.

17 Q Are you familiar with the violent objection of the government of  
18 Taiwan to the political, scientific and cultural relationships  
19 between the United States and Red China?

20 A Since I have been living in the United States for sixteen years,  
21 I feel that the policies adopted by the United States government  
22 is very correct.

23 Q Are you familiar with the fact that the Formosan government was  
24 expelled from the United Nations at the time that Red China was  
25 admitted to the United Nations?

26 A ---

- 6 -  
TRANSCRIPT OF HEARING

United States Department of Justice. — Immigration and Naturalization Service

1 Q Are you familiar with the fact that at the time that the Taiwan  
2 government - at the time that the Red China was admitted to the  
3 United Nations that the Taiwan government was expelled from the  
4 United Nations?

5 A ---

6 MR. LEVINE: I object to that. There is absolutely no ground  
7 for such an inquiry by Counsel.

8 MR. FIELD: I ask the SIO to take judicial notice.

9 IMMIGRATION JUDGE: I'll take notice.

10 MR. LEVINE: There is no longer...

11 IMMIGRATION JUDGE: All right. Let's have no further discussion. Any-  
12 thing else Counsel?

13 MR. FIELD: Yes.

14 MR. FIELD TO RESPONDENT:

15 Q Do you also object to deportation to Formosa on the grounds that  
16 you would be subjected to cruel and inhuman punishment by the  
17 United States government at such time?

18 A ---

19 IMMIGRATION JUDGE: Are you objecting?

20 MR. LEVINE: I, of course, object sir.

21 IMMIGRATION JUDGE: I'll sustain the objection.

22 MR. FIELD: I then make a tender of proof.

23 IMMIGRATION JUDGE: You can prove the allegation of cruel and unusual  
24 punishment.

25 MR. FIELD: I'm going to make a tender of proof. But I would  
26 present a tender of proof of the fact upon which this is based.

TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service



1 IMMIGRATION JUDGE: Go ahead. Tell me what the story is.

2 MR. FIELD: I expect to prove that Nationalist China on Formosa

3 is imposing a death penalty to drug offenses which is documented

4 by a recent case and the respondent here would be subjected to the

5 death penalty in Nationalist China even though she has committed

6 no crime there. To support thereof I refer to the case of Lei...

7 IMMIGRATION JUDGE: What are you going to give me to prove it?

8 MR. FIELD: The case whereby, a case that was in Immigration,

9 where the man was deported to...

10 IMMIGRATION JUDGE: Give me the name of the case.

11 MR. FIELD: The name of the case is Lei Choun Hsu, case number

12 58561, that's a 1968 case.

13 IMMIGRATION JUDGE: What is that number?

14 MR. FIELD: That's the prison number - that's the criminal

15 number, 58561.

16 IMMIGRATION JUDGE: What good is that?

17 MR. FIELD: It's a 1968 case.

18 IMMIGRATION JUDGE: I thought you said this was an Immigration case.

19 MR. FIELD: Yes. He was deported by Immigration.

20 IMMIGRATION JUDGE: Well then, give us the Immigration number.

21 MR. FIELD: I don't have the Immigration number.

22 IMMIGRATION JUDGE: Well, I'll give you an opportunity to get it because

23 I can't find it without that. Mr. Levine can't find it.

24 MR. FIELD: Will I...

25 IMMIGRATION JUDGE: I'll give you an opportunity to get it.

26 MR. FIELD: Will I be permitted to ask Immigration administration

- 8 -

TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 to search their files...

2 IMMIGRATION JUDGE: It's a public record. You say it's a criminal  
3 case, that's a public record. If there's a deportation order,  
4 there is a public record. The district director will be happy  
5 to give it to you.

6 MR. FIELD: Fine. Then may I have a reasonable time to...

7 IMMIGRATION JUDGE: You certainly may.

8 MR. FIELD: There was one further thing to finish this out...

9 IMMIGRATION JUDGE: All right. What else do you have on the 243(h)?

10 MR. FIELD: I also have a newspaper clipping regarding a recent  
11 death sentence in Taiwan.

12 IMMIGRATION JUDGE: Let me see it.

13 MR. FIELD: Do you want to see the translation?

14 IMMIGRATION JUDGE: I want both. The English translation is indis-  
15 pensable due to my lack of familiarity with the Chinese language.  
16 Mr. Levine?

17 MR. LEVINE: Yes, I have read these documents offered by Counsel.  
18 I object to their introduction in evidence on the grounds that they  
19 have no relationship to respondent - to the present case before  
20 you, sir. In this case...

21 IMMIGRATION JUDGE: I have your objection. I will allow it for what-  
22 ever import it may have. We'll make it Exhibit R-1. All right.  
23 What else do you have Counsel?

24 MR. FIELD: I ask to - ask you to take judicial notice of the  
25 position of the Taiwan government with regard to the matters that  
26 respondent has testified to regarding the admission of Red China



1 to the United Nations. Their reaction has been violent and extreme.  
2 IMMIGRATION JUDGE: I will not take such notice.  
3 MR. FIELD: May I...  
4 IMMIGRATION JUDGE: You may present any evidence you want to support  
5 the contention.  
6 MR. FIELD: May I then have an opportunity at the same time as  
7 I have other things to present - newspaper clippings of the state-  
8 ments I...  
9 IMMIGRATION JUDGE: I object to your use of the word violent. If you  
10 want me to take judicial notice of the fact that the government  
11 of the Republic of China has objected in all of the forums that I  
12 am aware that it speaks in relation to the change of policy of  
13 both the United States and the U.N. with regard to recognition of  
14 Red China and trade with Red China, I'll do it. But the word  
15 violent is one I'm not going to adopt.  
16 MR. FIELD: May I use the word strong objection?  
17 IMMIGRATION JUDGE: You can use strenuous but not violent.  
18 MR. FIELD: All right. Strenuous and strong including the  
19 governance of diplomatic relationships.  
20 IMMIGRATION JUDGE: All right. I have it. Mr. Field, what else do  
21 have?  
22 MR. FIELD: That's all.  
23 IMMIGRATION JUDGE: All right. Mr. Levine?  
24 MR. LEVINE: No questions.  
25 IMMIGRATION JUDGE: All right. Mr. Field, now how long will it take  
26 you? I will give you a period of thirty days to find the what-

XXXXXX

- 10 -

TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 ever it is - the criminal case that you referred to and to present  
2 that in writing. Whatever you do have in the way of documentary  
3 evidence relating to this matter, present that, together with a  
4 memorandum of law as to all of your contentions in regard to the  
5 application for 243(h), and an offer of proof with regard to this  
6 criminal record, whatever it is, as to exactly what you would prove  
7 on further hearing if further hearing is held with regard to that  
8 particular case, whatever it involves. If on the basis of the  
9 documents that you submit I consider that a further hearing is  
10 required, I will reconvene the hearing on notice only, following  
11 the receipt of your documentation and the government will have an  
12 opportunity to present any reply or further evidence if it so  
13 chooses by notifying me.

14 MR. LEVINE: May we have one more thing - that copies of these  
15 documents be served on me.

16 MR. FIELD: I have no objection.

17 IMMIGRATION JUDGE: Then the hearing will be closed subject to possible  
18 reconvention in the event that the need should develop. Meanwhile  
19 you do have, as I stated, thirty days, I'll make it until November  
20 30.

21 MR. FIELD: Is it possible to have two days longer? I'm going  
22 to be out of the country for about ten days starting next Sunday.

23 IMMIGRATION JUDGE: Make it December 8.  
24  
25  
26

- 11 -  
TRANSCRIPT OF HEARING

United States Department of Justice -- Immigration and Naturalization Service



TWO DRUG TRAFFICKERS WERE SENTENCED TO DEATH AND  
FOURTEEN DEFENDANTS INVOLVED WERE CONVICTED TO PRISON TERM

( A report from the United Daily) An overseas Chinese living in Hong Kong, Shan Hwa Po, and others were accused of engaging in international narcotics trade between Taiwan and Hong Kong and they were given a decision of "guilty" by the Taiwan District Court on August 30, 1972.

According to the Court's decision the principal offenses, Shan Hwa Po and Chao Ho Shêng, were given a death sentence and the others of fourteen defendants were sentenced to prison term respectively.

The text of the decision is as follows:

1. Shan Hwa Po: Death penalty and deprivation of civil rights to the end of his life, because of carrying on narcotics trade in conjunction with others; two months prison term for committing a theft; ten months prison term for an offense to an ordinance issued by the Government prohibiting conducting trades with foreign currencies-in violation of the lines of the law of national mobilization. Accordingly, the defendant should go to the scaffold with deprivation of civil rights to the end of his life.
2. Chao Ho Shêng: Capital punishment and deprivation of civil rights to the end of his life because of engaging in narcotics trade in concert with others.
3. Lin Chao: Three years prison term on a charge of getting possession of narcotic drugs.

UNITED STATES DEPARTMENT OF JUSTICE  
IMMIGRATION AND NATURALIZATION SERVICE

20 West Broadway  
New York, N.Y. 10007

Date: July 23, 1973

File: A12 084 054

Irving E. Fields  
Siegel & Fields  
310 Madison Avenue  
New York, N. Y. 10017  
and  
Nathan Levine  
Trial Attorney  
New York, N. Y.

NOTICE OF DECISION

MATTER OF VIOLA CHOW

Dear Sir:

- ☒ Attached is a copy of the written decision of the Special Inquiry Officer. This decision is final unless an appeal is taken to the Board of Immigration Appeals by returning to this office on or before August 3, 1973 the enclosed copies of Form I-290A, Notice of Appeal, properly executed, together with a fee of twenty-five dollars (\$25.00).
- ☐ Attached is an information copy of the oral decision of the Special Inquiry Officer made on \_\_\_\_\_
- ☐ Attached, as requested, is a transcript of the testimony of record, pages to \_\_\_\_\_ which is being loaned to you on condition that no copy thereof will be made, that it will be retained in your possession and control, and that it will be surrendered upon final disposition of the case or upon demand by the Service.
- ☐ You are advised that on \_\_\_\_\_ the Special Inquiry Officer entered an order, which is final, granting the application for adjustment of status to that of a permanent resident under Section \_\_\_\_\_ of the Immigration and Nationality Act. A Form I-151, Alien Registration Receipt Card will be delivered in due course.

Very truly yours,

*Loretta Barton*  
Special Inquiry Aide  
Immigration Court



UNITED STATES DEPARTMENT OF JUSTICE  
Immigration and Naturalization Service

File: A12 084 054 - New York

JUL 13 1973

In the Matter of )

VIOLA CPOW )

IN DEPORTATION PROCEEDINGS

Respondent )

CHARGE:

I & N Act - Section 241(a)(11) (8 USC 1251(a)(11)) -  
convicted of violation of law governing the taxing, etc.  
of drugs: opium and conspiracy so to do

APPLICATION:

Withholding of deportation to Taiwan under Section 243(h)  
(8USC 1253(h))

In Behalf of Respondent:

Irving E. Fields  
Siegel & Fields  
310 Madison Avenue  
New York, N. Y.

In Behalf of Service:

Nathan Levine  
Trial Attorney  
New York, N. Y.

DECISION OF THE IMMIGRATION JUDGE

On May 25, 1972 the Board of Immigration Appeals entered an order remanding the proceedings to the Immigration Judge for the introduction of new evidence material to the issue of respondent's eligibility for relief under Section 243(i) of the Immigration and Nationality Act. Deportability was conceded in the original hearing before the Immigration Judge and was not in issue on the appeal taken to the Board of Immigration Appeals. Accordingly, the only remaining question to resolve is the request for withholding of deportation under Section 243(h).

I have been substituted for the prior Immigration Judge in as much as the respondent presently resides in New York City and the Immigration Judge before whom the original hearing was held presides over hearings in the Southeast region. Prior to proceeding with the reopened hearing I familiarized myself with the entire record. Counsel, at the reopened hearing consented to the substitution and raised no objection. On the basis of the entire record I find that deportability on the charge set forth in the Order to Show Cause has been established.

Respondent is a divorced, female alien, a native and citizen of China, who has resided in the United States first in a diplomatic status and later as a permanent resident since 1959. Although her father, mother, brother, sister and twin 15 year old children all reside in the United States, the respondent is not eligible for any discretionary relief from deportation by reason of the conviction under the narcotics charge and consequent deportability. She has selected Hong Kong as the country to which she wished to be sent if deported.

Respondent contends that she would be subjected to persecution within the meaning of Section 243(h) if returned to Taiwan. The nature of this claim as articulated in the course of the hearing before me appears to have two points. The first is that she holds opinions concerning the interrelationship of the government of the United States in its commercial and foreign policy relations with the People's Republic of China. She contends that these opinions of hers are, in substance, approval of the steps taken by the Nixon administration in relation to China. Because of these recent steps taken by the administration are not favored by the government of the Republic of China



on Taiwan, she believes that she would be subjected to some unstated inferior position if she were sent to Taiwan. A further aspect of this is her opinion that because she has been in the United States for fifteen years her loyalty to the government of the Republic of China would be questioned.

The second point she urges is that the government in Taiwan is enforcing criminal laws relating to narcotics against those convicted there by severe penalties including death. In support of this contention there has been produced a newspaper report of a conviction and sentence to death of two drug traffickers. It also reports that fourteen other defendants were given prison terms at the trial in the Taiwan district court on August 30, 1972. There has been no showing or contention made that the death penalty is inflicted on drug traffickers in Taiwan on the basis of race, religion or political opinion. The respondent also seems to be making the argument that her deportation to Taiwan would result in her being singled out because of her prior relationships to the drug traffic. This she contends would amount to cruel and unusual punishment by the United States in violation of the Constitution. On that basis she argues that this would require the granting of her request for withholding of deportation. One additional contention is made by the respondent with regard to the treatment of those involved in narcotics traffic in Taiwan. Counsel has represented that a certain individual, one Lei Choun Hsu, apparently a Chinese person, born September 11, 1927 was deported from the United States. This deportation followed a criminal conviction, in a court which Counsel is unable to identify. In order to try and make such an identification he requested that the Service furnish him with the date on which Lei Choun Hsu was deported. A check of the Service indices by the trial attorney failed to locate any record relating to Lei (continued on following page)

Choun Hsu. Assuming that Lei Choun Hsu was in fact deported after having been convicted for some offense relating to narcotics the contention made is that regard does not support the claim for withholding of deportation by the respondent. The only contention made is that sometime after his deportation Lei Choun Hsu was allegedly sentenced to death in Formosa. On the basis of those bald allegations and with no showing as to either the actual fact or the reason why the alleged death penalty was inflicted respondent contends that somehow this forms a basis for withholding of her deportation.

On the basis of the entire record, I find no basis for concluding that this respondent would be singled out for persecution in the event of her return to Taiwan. She has failed to meet her burden of establishing by any substantial, credible evidence that the particularized persecution contemplated under Section 243(h) would result upon her return to Taiwan.

ORDER: IT IS ORDERED that the respondent be deported from the United States to Hong Kong on the charges contained in the Order to Show Cause.

IT IS FURTHER ORDERED that if the aforementioned country advises the Attorney General that it is unwilling to accept the respondent into its territory or fails to advise the Attorney General within three months following original inquiry whether it will or will not accept the respondent into its territory, the respondent shall be deported to the Republic of China on Taiwan.

IT IS FURTHER ORDERED that the application for withholding of deportation to the Republic of China on Taiwan under Section 243(h) of the Immigration and



Nationality Act be and the same, hereby, is denied.

*Francis J. Lyons*

FRANCIS J. LYONS  
Immigration Judge

- 5 -

# NOTICE OF APPEAL TO THE BOARD OF IMMIGRATION APPEALS

SUBMIT IN TRIPLICATE TO:  
IMMIGRATION AND NATURALIZATION SERVICE

Fee Stamp  
81612-00V  
INFORMATION

In the Matter of:

CHOW, VIOLA

File No. A12 084 054

1. I hereby appeal to the Board of Immigration Appeals from the decision, dated July 19, 1973, in the above entitled case.
2. Briefly, state reasons for this appeal.
  - (a) The testimony and proof shows that the Appellant would be subjected to persecution as defined in Section 243(h) if deported to Taiwan. This persecution would necessarily arise by virtue of the vociferous and vehement position of the Taiwan government with regard to those who favor the admission of Red China to the U.N., as the Appellant does, in support of the United States government's official position.
  - (b) Appellant's constitutional rights would be violated in that she would be subjected to cruel and unusual punishment if deported to Taiwan, in that the Taiwan government would either sentence her to death or a long prison term without commission of any offense against the Taiwan government, and solely by virtue of her conviction in the United States.
  - (c) Appellant's constitutional rights have been violated in that the Immigration Service has failed and refused to produce records despite the requests of counsel for the Appellant, which documents are in the possession of the Immigration Service and relate to the merits of the hearing.
3. I do (do) desire oral argument before the Board of Immigration Appeals in Washington, D. C.
4. I am (am) filing a separate written brief or statement. Undersigned requests transcript of hearing and copies of exhibits so that brief can be prepared. Request extension of time to serve brief.

Signature of Appellant (or attorney or representative)

Irving E. Field

(Print or type name)

310 Madison Avenue

New York, N. Y. 10017

Address (Number, Street, City, State, Zip Code)

August 2, 1973

Date

IMPORTANT: SEE INSTRUCTIONS ON REVERSE SIDE OF THIS NOTICE



## INSTRUCTIONS

1. **Fees.** This notice of appeal must be accompanied by a fee of \$25. (Only a single fee need be paid if two or more persons are covered by a single decision.) Attach money order or check, payable to the "Immigration and Naturalization Service, Department of Justice." Do NOT send cash. If this form is filed in Guam, make remittance payable to the "Treasurer, Guam;" if filed in the Virgin Islands, make remittance payable to "Commissioner of Finance of the Virgin Islands." The fee is required for filing the appeal and is not returnable regardless of the action taken thereon.
2. **Counsel.** In presenting and prosecuting this appeal the appellant may, if he desires, be represented at no expense to the Government by counsel or other duly authorized representatives. No interpreters are furnished by the Government for the argument before the Board.
3. **Briefs.** A brief in support of or in opposition to an appeal is not required, but if a brief is filed it shall be in triplicate and submitted to the officer of the Immigration and Naturalization Service having administrative jurisdiction over the case within the time fixed for the appeal or within any other additional period designated by the special inquiry officer or other Service officer who made the decision. Such officer, or the Board for good cause, may extend the time for filing a brief or reply brief. The Board in its discretion may authorize the filing of briefs directly with it, in which event the opposing party shall be allowed a specified time to respond.
4. **Oral argument.** *Oral argument shall not be heard on appeal from an order of a special inquiry officer denying a motion to reopen or reconsider or stay deportation, unless specifically directed by the Board.* Oral argument is optional; no personal appearance by the appellant or counsel is required. The Board will consider every case on the record submitted, whether or not oral representations are made. Oral argument in any one case should not extend beyond fifteen (15) minutes, unless arrangements for additional time are made with the Board in advance of the hearing.  
  
An appellant will not be released from detention or permitted to enter the United States to present oral argument to the Board but may make arrangements to have someone represent him before the Board, and unless such arrangements are made at the time the appeal is taken, the Board will not calendar the case for argument.
5. **No appeal.** *There is no appeal from an order of a special inquiry officer granting voluntary departure within a period of at least thirty days if the sole ground of appeal is that a greater period of departure time should have been fixed.*
6. **Summary dismissal of appeals.** The Board may deny oral argument and summarily dismiss any appeal in any deportation proceeding in which (i) the party concerned fails to specify the reason for his appeal on the reverse side of this form, (ii) the only reason specified by the party concerned for his Appeal involves a finding of fact or conclusion of law which was conceded by him at the hearing, (iii) the appeal is from an order that grants the party concerned the relief which he requested, or (iv) if the Board is satisfied, from a review of the record, that the appeal is frivolous and filed solely for purposes of delay.
7. **FILING OF NOTICE OF APPEAL.** THE NOTICE OF APPEAL, IN TRIPPLICATE, WITH THE REQUIRED FEE, MUST BE SUBMITTED TO THE IMMIGRATION AND NATURALIZATION SERVICE OFFICE WHERE THE CASE IS PENDING. THE NOTICE OF APPEAL IS NOT TO BE FORWARDED DIRECTLY TO THE BOARD OF DEPORTATION APPEALS.

20 West Broadway  
New York, New York 10007

A12 084 054 DB/ATK

March 25, 1974

Director  
Office of Refugee and Migration Affairs  
Department of State  
Washington, D.C.

Dear Sir:

Your recommendation is requested in the case of Viola CHOW who has applied for political asylum.

Mrs. CHOW, a native and citizen of the Republic of China on Taiwan, was born on December 21, 1936. Mrs. Chow's passport, Republic of China Diplomatic Passport D/No. 1116 was issued at Taipei, Taiwan on September 12, 1957 and contains an A-1 Diplomatic Visa #TA1-2227 issued by the American Embassy at Taipei on June 18, 1959 and valid for unlimited applications for admission into the United States until June 17, 1960. Mrs. Chow last entered the United States at Longview, Washington on October 19, 1959 for the duration of her diplomatic status. She subsequently had her status adjusted to that of permanent resident.

On November 12, 1969 Mrs. Chow was placed under deportation proceedings and charged with being deportable under Section 241(a)(11) of the Immigration and Nationality Act in that she was convicted of unlawfully and knowingly receiving, concealing, selling and facilitating the transportation, concealment and sale of opium and conspiracy to do so in violation of Title 21, United States Code, Sections 173 and 174. At a hearing held on November 8, Mrs. Chow was ordered deported from the United States to Hong Kong on the charge contained in the Order to Show Cause. It was further ordered that the application for temporary withholding of deportation to Taiwan under Section 243(h) of the Immigration and Nationality Act be denied. On April 16, 1973 the Board of Immigration Appeals, pursuant to an appeal citing new evidence in support of her claim to political asylum, remanded the case to the Immigration Judge for a new hearing. On July 19, 1973 the application for temporary withholding of deportation under Section 243(h) was again denied. On August 2, 1973 this decision was appealed to the Board of Immigration Appeals who are holding their decision in abeyance pending your consideration of Mrs. Chow's application for political asylum.

In an interview at this office Mrs. Chow elaborated on her claim to political asylum. She stated that because she was imprisoned in the United States she will be imprisoned in Taiwan. She stated that this happened to her mother (1776/5042/0049) who was deported to Taiwan in December 1967 after serving a sentence at the New York State Correctional Facility at Auburn, New York.



Her attorney, who was present during the interview added that inasmuch as Mrs. Chow is in favor of the United States position that the People's Republic of China be recognized and trade relations established she would be imprisoned for that were she to return to Taiwan.

Mrs. Chow has nothing further to state regarding her claim to political asylum.

Very truly yours,

*Sol Marks*

Sol Marks  
District Director  
New York District

CC: Central Office  
Mr. William O'Brien

*File*



DEPARTMENT OF STATE

Washington, D. C. 20520

APR 4 1974

Dear Mr. Marks:

Reference is made to your letter of March 25, 1974, concerning the request for refugee status of Mrs. Viola CHOW, A12 084 054 DB/AJK, a citizen of the Republic of China.

We are unable to provide you with a determination on the basis of the scanty information provided concerning Mrs. Chow's fear of return to Taiwan or Hong Kong. It would be helpful if you would send us more information on this case, particularly concerning the arguments she made with regard to her claim to the benefits of 243(h).

Thank you for your help in this matter.

Sincerely yours,

*Louis A. Wiesner*

Louis A. Wiesner  
Director  
Office of Refugee and  
Migration Affairs

Mr. Sol Marks,  
District Director,  
Immigration and Naturalization Service,  
20 West Broadway,  
New York, New York 10007.





DEPARTMENT OF STATE

Washington, D.C. 20520

JUN 2 1974  
DEPORTATION

Dear Mr. Marks:

Reference is made to your letter of March 25, 1974 concerning the request for refugee status of Ms. Viola Chow, A12 084 054 DB/AJIC, a citizen of the Republic of China.

Ms. Chow apparently bases her claim to asylum on the fact that she supports U.S. policy toward China, particularly with respect to contacts and trade with the People's Republic of China. She believes she would be subject to persecution as a result. Since she has expressed these views in a public forum during her appeal proceedings, her views might be known to the authorities of the Republic of China. However, unless Ms. Chow acted directly on these views in some way which the Republic of China Government considered harmful to its interests, we believe no direct action will be taken against her. There is a possibility she might be kept under surveillance.

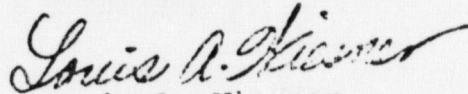
We also note that Ms. Chow's claim that deportation to Taiwan would result in her being imprisoned or even executed because of her drug-related conviction here thus making deportation a form of cruel and unusual punishment. A case cited of an overseas Chinese from Hong Kong sentenced to death by a court in Taiwan for narcotics trafficking between Hong Kong and Taiwan. The defendant in that case appears to have been tried in Taiwan in a case over which the court there clearly had jurisdiction. No contention is made that the defendant had been tried twice for the same crime.

Given Ms. Chow's conviction for a narcotics-related offense, it is likely that she will be carefully watched to ensure a repetition of her activities does not occur. This is not germane, however, to our obligations under the Convention Relating to the Status of Refugees.

Mr. Sol Marks,  
District Director,  
Immigration and Naturalization Service,  
20 West Broadway,  
New York, New York 10007.

Unless Ms. Chow can provide more substantial evidence to support her claim, we are unable from the information thus far submitted to conclude that she should be exempted from regular immigration procedures on the grounds that she would suffer persecution on account of race, religion, nationality, political opinion, or membership in a particular social group should she return to the Republic of China. Should Ms. Chow present additional information which to the Service seems to require further review, we will be pleased to give further consideration to the case.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Louis A. Wiesner".

Louis A. Wiesner  
Director  
Office of Refugee and  
Migration Affairs



16  
UNITED STATES DEPARTMENT OF JUSTICE

BOARD OF IMMIGRATION APPEALS  
Washington, D.C. 20530

August 2, 1974



CHOW  
A12 084 054

Irving E. Field, Esq.  
Siegel & Field  
310 Madison Avenue  
New York, N.Y. 10017

Dear Sir:

Reference is made to your interest in the above case.

For your information, there is enclosed herewith copy of the decision and order of the Board of Immigration Appeals.

Sincerely yours,

*Maurice A. Roberts*

Maurice A. Roberts  
Chairman

UNITED STATES DEPARTMENT OF JUSTICE  
Board of Immigration Appeals  
Washington, D.C. 20530

AUG 2 - 1974

File: A12 084 054 - New York

In re: VIOLA CHOW

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Irving E. Field, Esq.  
Siegel & Field  
310 Madison Avenue  
New York, New York 10017

CHARGE:

Order: Sec. 241(a)(11), I&N Act (8 U.S.C. 1251  
(a)(11)) - Convicted of violation of  
laws governing taxing, etc. of drugs:  
opium, and conspiracy to do so

APPLICATION: Withholding of deportation under section  
243(h) of the Immigration and Nationality  
Act

This is an appeal from a decision dated July 19, 1973, in which the immigration judge denied the respondent's application for withholding of deportation under section 243(h) of the Immigration and Nationality Act and ordered her deportation to Hong Kong, with an alternate order of deportation to the Republic of China on Taiwan. The respondent has appealed from that decision. The appeal will be dismissed.



The respondent is a 38-year-old female alien who is a native and citizen of China. She has conceded deportability. The issue on appeal concerns her application for withholding of deportation to Taiwan under section 243(h) of the Act.

The respondent claims that she would be subject to persecution in Taiwan because: (1) she supports the United States Government's policy of rapprochement with the Peoples Republic of China, which policy is vigorously opposed by the government on Taiwan; and (2) the government on Taiwan would sentence the respondent to either a long prison term or execution because of her conviction in the United States for a narcotics violation.

In support of her second claim, the respondent has submitted a translation of a newspaper article from Taiwan stating that several persons had been sentenced to death after conviction in a Taiwan court for carrying on an international narcotics trade between Hong Kong and Taiwan. In addition, counsel has alleged that an alien named Lei Choun Hsu, who was deported from the United States, was sentenced to a jail term in Taiwan solely because he had been convicted of a crime in the United States. This allegation was not supported by any documentation, and, according to the immigration judge, a check of Service records failed to locate any records relating to Lei Choun Hsu.

The information regarding the respondent's claim of persecution in Taiwan was submitted to the Office of Refugee and Migration Affairs of the Department of State. A letter from that office, dated June 3, 1974, stated that although the respondent's views regarding United States policy towards China might be known to the government in Taiwan, that government would not take action against the respondent unless she took affirmative action directed against the government. The

letter acknowledged that the respondent may be placed under surveillance by the government in Taiwan both because of her views and to insure that she does not repeat her narcotics violation. The letter stated that the respondent should not be exempted from regular immigration procedures.

The respondent's allegation that she may be singled out for special treatment in Taiwan because of her narcotics conviction is not germane to our determination under section 243(h) of the Act, because it does not relate to persecution on account of race, religion, nationality, membership of a particular social group or political opinion. The fact that the respondent may be placed under surveillance for her views regarding United States policy in China is not sufficient to establish that she has a well-founded fear that her life or freedom will be threatened.

After consideration of all of the evidence in the record, we conclude that the respondent has failed to show that she has a well-founded fear that her life or freedom will be threatened in Taiwan on account of her race, religion, nationality, membership of a particular social group or political opinion. We therefore conclude that she will not be subject to persecution if deported there. See Matter of Dumar, Interim Decision 2192 (BIA 1973).

Finally, the respondent claims that her deportation to Taiwan would be cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution. The claim that deportation can constitute cruel and unusual punishment has been rejected by the courts on many occasions. Fong Yue Ting v. United States, 149 U.S. 698, 730 (1893); Rodriguez-Romero v. INS, 434 F.2d 1022 (9 Cir. 1970), cert. denied, 401 U.S. 976 (1971); Tsimbidy-Rochu v. INS, 414 F.2d 797 (9 Cir.



A12 084 054

1969); Cortez v. INS, 395 F.2d 965 (5 Cir. 1968);  
Chabolla-Delgado v. INS, 384 F.2d 360 (9 Cir. 1967);  
see Harisiades v. Shaughnessy, 342 U.S. 580 (1952).

We shall uphold the immigration judge's decision  
and dismiss the appeal.

ORDER: The appeal is dismissed.

Chairman

WARRANT OF DEPORTATION

TO ANY OFFICER OR EMPLOYEE OF THE UNITED STATES  
IMMIGRATION AND NATURALIZATION SERVICE

After due hearing before an authorized officer of the United States Immigration and Naturalization Service, and upon the basis thereof, an order has been duly made that the alien Viola CHOW who entered the United States at Longview, Washington on or about the 19th day of October, 1959, is subject to deportation under the following provisions of the United States, to wit:

Section 24(a)(11) of the Immigration and Naturalization Act.

I, the undersigned officer of the United States, \* \* \*

[Sgd] Thurston A. Black  
Acting Assistant Director  
for Deportation

August 7, 1974  
New York, New York



August 5, 1974

Hon. Maurice A. Roberts  
Chairman, Board of Immigration Appeals  
Washington, D. C. 20530

Re: Viola Chow  
A12 084 054

Honorable Sir:

I have this morning received the decision of the Board of Immigration Appeals dismissing the appeal.

The decision on the appeal was made without my participation, either by way of argument or by submission of a brief. The Notice of Appeal specifically requests oral argument.

After my letter of September 13, 1973 to the Board, the record file was returned to New York for processing in accordance with OI 108.1(f)(2), in order to complete the record.

My letter of September 13, 1973 specifically requested that a new date be assigned for argument and that the undersigned be granted an opportunity to present a brief, if the State Department ruling was unfavorable. Instead, the first notice that I received from the Board was its decision. I received no opportunity to present oral argument (which is most important) or to submit a brief.

I respectfully submit that the Appellant has been denied procedural due process. By reason thereof, I respectfully request that the appeal be reopened and I be permitted oral argument and/or an opportunity to submit a brief.

This is an unusual case and the issues are not as simple as would appear from the decision of the Board. The minimum that would be necessary to properly present Appellant's case would be oral argument: a brief would help.

With regard to the alien named Lei Choun Hsu, I charge that no proper search was made for his records, since the federal authorities turned Lei Choun Hsu over to the New York Office of the Immigration and Naturalization Service. At the time of the OI interview, after this case was returned to New York, I again requested that a search be made for the records of Lei Choun Hsu, and I was assured that this would be done. To date, I have no word. This is not a matter that can be brushed aside lightly, since one entire facet of the appeal is intertwined with the case of Lei Choun Hsu.

Hon. Maurice A. Roberts

-2-

August 5, 1974

Accordingly, the undersigned respectfully requests that the appeal be reopened for processing pursuant to the Code of Federal Regulations, and that in addition, the New York District Director's office be directed to conduct a real search for the records of Lei Cheun Hsu..

Respectfully yours,

IEF:fw

IRVING E. FIELD

cc: Irving A. Appleman, Appellate Trial Attorney (copy enclosed)

CERTIFIED - RETURN RECEIPT REQUESTED

SENDER: Be sure to follow instructions on other side

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465200 \_\_\_\_\_ ② \_\_\_\_\_

INSURED NO. \_\_\_\_\_

DATE DELIVERED \_\_\_\_\_ ③ \_\_\_\_\_ SHOW WHERE DELIVERED (Only if requested and include ZIP Code)

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No. 465200

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SENT TO  
Hon. Maurice A. Roberts  
STREET AND NO.  
Chairman, Bd. of Immigration Appeals  
P.O., STATE AND ZIP CODE  
Washington, D.C. 20530

POSTMARK OR DATE  
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A-60



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RECEIPT

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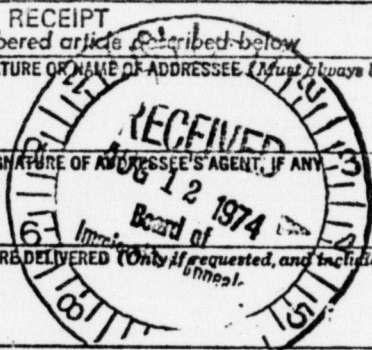
SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

024455

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August 6, 1974

Hon. Maurice A. Roberts  
Chairman, Board of Immigration Appeals  
Washington, D. C. 20530

Re: Viola Chow  
A12 084 054

Honorable Sir:

Since I sent my letter yesterday, I have endeavored to ascertain the accuracy of the fact that the New York District Office indeed had information regarding Lei Choum Hsu.

I spoke with the Office of the Area Director of the Department of Correctional Services of the State of New York, from whence I had obtained my original information that Lei Choum Hsu had been delivered to the Immigration Service pursuant to a warrant, such delivery taking place in New York City.

I was informed that Lei Choum Hsu was turned over to the Immigration Service pursuant to a warrant dated May 9, 1960. His file number was A15 124 516. It defies credibility that the New York District Office has no information regarding this man and no record concerning him. The only conclusion that can be drawn is that no one bothered to make any sort of search for these records.

I again respectfully submit that this is not a matter that can be treated casually or indifferently. A person's liberty, and perhaps even her life, is at stake; and it is a clear violation of her constitutional rights for the Immigration and Naturalization Service not to provide this information which is under its exclusive control.

Accordingly, it is respectfully requested that this letter be considered in addition to my letter of yesterday, as an application to reopen the appeal; and that the New York District Office be directed to furnish the information concerning Lei Choum Hsu so that the undersigned can properly prepare his case.

Respectfully yours,

IEF:fw

IRVING E. FIELD

cc: Irving A. Appleman, Appellate Trial Attorney (copy enclosed)

CONTINUED - RETURN RECEIPT REQUESTED

A-61

RECEIVED  
INFORMATION  
AUGUST 15, 1974  
IMMIGRATION and NATURALIZATION  
SERVICE  
NEW YORK, N. Y.

IMMIGRATION and NATURALIZATION SERVICE  
THE BOARD OF IMMIGRATION APPEALS

----- x

In the Matter of : File No. A12 084 054  
VIOLA CHOW : MOTION TO REOPEN AND RECONSIDER

----- x

I. This is a motion to reopen the appeal and for reconsideration of the decision and order of the Board of Immigration Appeals dated August 1, 1974.

II. The reasons for this motion are as follows:

A. The respondent has been denied procedural due process.

1. The Notice of Appeal duly filed on August 2, 1973 specifically requests oral argument before the Board of Immigration Appeals. By letter of September 13, 1973, the undersigned respectfully requested of the Board of Immigration Appeals that all proceedings be held in abeyance until the record was completed pursuant to OI 108.1(f)(2). It was specifically requested that a new date be assigned for argument and that the undersigned be granted an opportunity to present a brief if the State Department ruling was unfavorable. On September 19, 1973, the Board returned the entire file to the New York Office for completion of processing in accordance with OI 108. The first notice received from the Board was its decision. No opportunity was granted the attorney for the respondent to present a brief or have oral argument. In view of the severity of this case in terms of its impact upon the alien, I respectfully submit that the case could not be properly presented without oral argument and without submission of a brief, which are important rights granted by the Code of Federal Regulations.

2. The Notice of Appeal contained a written request for a transcript of the hearing and for copies of exhibits so that the brief



could be prepared. Also requested was an extension of time to serve such brief, inasmuch as the minutes of the hearing and the exhibits were necessary for a proper presentation of the brief. On July 23, 1973 the New York office of the Immigration and Naturalization Service mailed a Notice of Decision by the Immigration Judge to the undersigned, but no transcript of the minutes. To date, no transcript of the minutes or copies of the exhibits have been received by the undersigned, effectively preventing the preparation of a competent brief or the presentation of proper argument.

B. The alien has not been afforded due process and equal protection of the laws to which she is entitled. (Galvan v. Press, 347 U.S. 522, 530; Cermeno-Cerna v. Farrell, 291 F. Supp. 521.)

1. Repeated requests have been made by the alien's attorney for the record of one Lei Choun Hsu, A15 124 516, for use by the alien both in the deportation hearing, and on the appeal. The Immigration Judge makes reference to this request and states that he was informed that a search revealed no such file. Similarly, repeated direct requests to personnel at the New York Office have gone unheeded. It defies credibility that this record has not been found. It appears more likely that this record has been deliberately withheld, or that no real search has been made for it, legally the same thing. It is again requested that the New York Office be directed to find this record and permit its inspection by the alien's counsel, so that an effective presentation can be made.

C. Upon information and belief, the decision and order of the Immigration Judge has been disregarded and/or violated.

1. The New York Office has delivered to the undersigned and to the alien Form I-166 informing the alien and the undersigned that

arrangements have been made for deportation to Taiwan. She is ordered to report to the Immigration Service at 20 West Broadway, New York, N. Y., ready for departure at 9 A.M. on August 22, 1974. This is a clear violation of the decision and order of the Immigration Judge dated July 13, 1973, which orders that the Respondent be deported to Hong Kong first, and to Taiwan only if Hong Kong will not accept the alien. There appears to have been no attempt made to procure the deportation to Hong Kong.

III. The subject of the deportation order is not the subject of any pending criminal proceeding under Section 242(e) of the Act.

IV. The alien for whose relief the motion is filed is not subject to any pending criminal prosecution.

V. The validity of the deportation order has not been and is presently not the subject of any judicial proceeding.

VI. A stay of execution of the decision, and a stay of any proceedings to enforce departure are respectfully requested.

WHEREFORE, it is respectfully requested that the above entitled proceedings be reopened and that the relief requested by the undersigned be granted, including the following relief:

1. The proceedings be reopened.
2. The undersigned be furnished with a copy of the transcript of testimony, and the exhibits.
3. The undersigned be granted an opportunity to submit a brief after such transcript and documents are received.
4. The undersigned be granted an opportunity for oral argument after such transcript and documents are received.
5. Preliminary to the above, the undersigned be given the information requested regarding Lei Choun Hsu and an opportunity to inspect



his file.

6. A stay be granted of all proceedings to enforce deportation, including deportation to Hong Kong and/or Taiwan.

7. Such other, further and different relief as to the Board may seem just and proper.

Respectfully Submitted,

8/15/74

No stay deportation  
Record file to BIA

Maurice F. Kiley

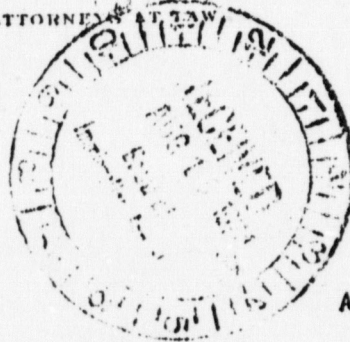
(Initials)

IRVING E. FIELD  
Attorney for Respondent -  
Viola Chow  
310 Madison Avenue  
New York, N. Y. 10017

(212) MU. 7-5018

SIEGEL & FIELD

ATTORNEYS AT LAW



310 MADISON AVENUE  
NEW YORK, N. Y. 10017  
MURRAY HILL 7-1000

MEYER D. SIEGEL  
IRVING E. FIELD

August 15, 1974

Hon. Maurice A. Roberts  
Chairman, Board of Immigration Appeals  
Washington, D. C. 20530

Re: Viola Chow  
File No. A12 084 054

Honorable Sir:

Pursuant to our conversation of yesterday, I enclose a copy of motion papers which are filed today in the New York Office.

I do not know yet whether a stay is being granted, so that I must notify your office by telephone later today with regard to a stay.

Respectfully yours,

*Irving E. Field*  
IRVING E. FIELD

IEP:fw  
encl.

SPECIAL DELIVERY



20 WEST BROADWAY  
New York, N.Y. 10007

August 15, 1975

Mrs. Viola CHOW  
50 Bayard St., Apt. 6L  
New York, N.Y. 10013

Dear Madam:

Reference is made to a motion to reopen and reconsider their decision of August 2, 1974 submitted to the Board of Immigration Appeals by your attorney on August 15, 1975.

Please be advised that the motion and file will be forwarded to the Board of Immigration Appeals for their appropriate motion.

You are further advised that the request for a stay of deportation submitted in conjunction with the above has been denied and that you will be required to surrender at this office on August 22, 1974 for deportation to the Republic of China on Taiwan in accordance with the instructions contained in the letter of August 8, 1974.

Very truly yours,

[Sgd] Maurice F. Kiley

August 16, 1974

Hon. Maurice A. Roberts  
Chairman, Board of Immigration Appeals  
Washington, D. C. 20530

Re: Viola Chow  
File No. A12 084 054

Honorable Sir:

Yesterday I was at the New York Office of the Immigration and Naturalization Service and filed my motion papers to reopen and reconsider, and paid the requisite fee. I spoke with a Mr. Kampel, who informed me that the Service refused to grant a stay of deportation. My copy of the Motion to Reopen is endorsed:

"8/15/74  
No stay deportation  
Record file to BIA"

Maurice F. Kiley"  
(initials undecipherable)

Mr. Kampel also informed me:

1. That the record concerning Lei Choun Hau was in the Buffalo office of the Immigration and Naturalization Service and offered to show me the file, which I declined. I stated to him that I wanted only formal notification and inspection of the record. Mr. Kampel, a few minutes later, informed me that he was not sure the record was at the Buffalo office.
2. That Hong Kong had refused to accept the Respondent on August 6, 1974. If this is true, then item "E." of the motion (the item which discussed that portion of the Immigration Judge which directs deportation to Hong Kong first) will be withdrawn.

I am certain that Mr. Kampel will confirm these statements if requested to do so.

I also wish to respectfully call to the attention of the Board the fact that I have had no access to any documentation, opinions or statements concerning OI 108. The Board will note that I have had no opportunity to examine the relevant portion of the file, and that the decision of the Board, which discussed this aspect of the case at length, was made without an opportunity by the Respondent or counsel to contest, dispute or contradict any "facts" contained therein.



Hon. Maurice A. Roberts  
Chairman, Board of Immigration Appeals

-2-

August 16, 1974

I respectfully urge that procedural due process and a fair hearing have not been afforded the Respondent by reason thereof. I respectfully submit that substantive due process apply in deportation proceedings, since, as stated by the court in Galvan v. Press, 347 U.S. 522, at 530-531, intrinsic consequence of deportation are so close to punishment for crime. Under the circumstances of this case, the said decision is particularly pertinent.

Since the Service has indicated its intention of enforcing deportation at 9 A.M. on August 22, 1974, the undersigned is compelled to waive oral argument on this motion, and must employ this letter as a supplement to the motion papers to reopen. A copy of this letter is enclosed for the attention of Irving A. Appelman, Esq., Appellate Trial Attorney.

Respectfully submitted,

IRVING E. FIELD,  
Attorney for Respondent

IEF:fw

cc: Irving A. Appelman, Esq.

SPECIAL DELIVERY

UNITED STATES DEPARTMENT OF JUSTICE  
IMMIGRATION AND NATURALIZATION SERVICE

Date August 29, 1977

TO : Chairman  
Board of Immigration Appeals

FROM : Appellate Trial Attorney  
Office of General Counsel  
Immigration and Naturalization Service - BIA

SUBJECT: VIOLA CHOW, A12 084 054

- ☐ Attached is a self-explanatory communication concerning the above matter.
- ☐ Attached is a copy of an order entered by the Board. It is requested that it be designated for publication.
- ☒ It is requested that the Board expedite the subject case.
- ☐ The Immigration and Naturalization Service desires to be represented at oral argument of this case. Please advise date set for oral argument, and any subsequent changes.

Remarks:

*Paul C. Vincent*





United States Department of Justice  
Board of Immigration Appeals  
Washington, D.C. 20530

SEP 11 1974

File: A12 084 054 - New York

In re: VIOLA CHOW

IN DEPORTATION PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Irving E. Field, Esquire  
Siegel & Field  
310 Madison Avenue  
New York, New York 10017

CHARGES:

Order: Section 241(a)(11), I&N Act [8 U.S.C. 1251  
(a)(11)] - Convicted of violation of laws  
governing taxing, etc. of drugs: opium,  
and conspiracy to do so

APPLICATION: Motion to reopen

Upon consideration of the record and of counsel's  
motion, oral argument will be granted on the motion.

ORDER: Oral argument is granted.

Chairman

8

124454

## RECEIPT FOR CERTIFIED MAIL—30c (plus postage)

SENT TO	POSTMARK OR DATE
Hon. Maurice A. Roberts STREET AND NO. Chairman, Bd. of Immigration Appeals	9/13/74
P.O., STATE AND ZIP CODE Washington, D.C. 20530	
OPTIONAL SERVICES FOR ADDITIONAL FEES	
and date delivered 15c	

STICK POSTAGE STAMPS TO ARTICLE TO COVER POSTAGE (first class or airmail),  
CERTIFIED MAIL FEE, AND CHARGES FOR ANY SELECTED OPTIONAL SERVICES.

September 13, 1974

Hon. Maurice A. Roberts  
Chairman, Board of Immigration Appeals  
Washington, D. C. 20530

Re: Viola Chow  
File No. A12 084 054

Honorable Sir:

This is written in response to your letter and decision of September 11, 1974.

The undersigned will attend for oral argument on October 23, 1974. I will also file a brief one week before oral argument.

Based on a representation by the Service that Hong Kong did actually refuse to accept the alien, the undersigned withdraws the objection that Hong Kong did not act and will not address his brief or argument to that point.

However, new and significant information has come to my attention since the decision of the Board on August 2, 1974. In my letter of August 16, 1974, I notified the Board that I had been informed by a Mr. Kampel at the New York Office of the Immigration and Naturalization Service on August 15, 1974 that the record concerning one Lei Choun Hsu was in the Buffalo office of the Service. He offered to show me the file to substantiate this. A few minutes later, after a discussion with his superior, Mr. Kampel informed me that he was not sure the record was at the Buffalo office.

I respectfully request that I be advised as soon as practicable:

1. Whether Mr. Kampel will furnish a statement confirming this, and whether I will be able to inspect such statement.
2. Whether I will be permitted to examine that portion of the file relating to OI 108.
3. Whether the record file will be immediately available to me so that I may consult it before I write my brief.

Respectfully yours,

IEF:fw

IRVING E. FIELD

cc: Enclosed for Paul C. Vincent, Appellate Trial Attorney

CERTIFIED - RETURN RECEIPT REQUESTED

A-72



7

UNITED STATES DEPARTMENT OF JUSTICE  
IMMIGRATION AND NATURALIZATION SERVICE  
20 WEST BROADWAY  
NEW YORK, NEW YORK 10007

PLEASE REFER TO THIS FILE NUMBER

September 24, 1974

Irving E. Field, Esq.  
310 Madison Avenue  
New York, New York 10017

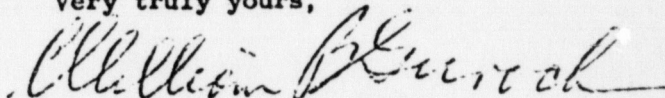
Re: Viola Chow  
File No.: A12 084 054

Dear Mr. Field:

I have been informed that oral argument in the case of Mrs. Viola Chow has been scheduled for October 23, 1974. I have also been informed by Mr. Paul Vincent, the Appellate Trial Attorney, that you desire to inspect file #A15 124 516 relating to Shu Lei Choun which may have material relating to your case.

Please be informed that I have obtained the file relating to Mr. Shu and I will be pleased to permit you to examine that file at your earliest convenience. Please ask for the undersigned when you come to the Immigration Office, 14th floor, 20 West Broadway, New York.

Very truly yours,



WILLIAM B. GUROCK  
Trial Attorney  
New York District

UNITED STATES GOVERNMENT

*Memorandum*

TO : Paul C. Vincent, Esq., Appellate Trial Attorney  
Board of Immigration Appeals, Department of  
Justice, Washington, D.C. 20530

DATE: October 3, 1974

FROM : Maurice F. Kiley, District Director  
New York, New York

SUBJECT: Viola Chow; A12 084 054.

In accordance with Mr. Gurock's letter of September 24, 1974, Mr. Fields appeared at his office yesterday and was permitted to review the Record of Proceedings in the case of Shu Lei Choun, File No. A15 124 516. In addition, he examined the Deportation Case Check Sheet showing the deportation of Mr. Shu from the United States on December 9, 1967 on a "remain longer" charge. The lookout notice was also shown to Mr. Fields which indicates that Mr. Shu was convicted of manslaughter first degree on October 10, 1961 and was sentenced to four to eight years in the state prison. The conviction was not used as a basis for his deportation for the United States.

Mr. Fields thanked Mr. Gurock for the courtesy extended to him.

*Maurice F. Kiley*  
(2)





RECEIPT FOR CERTIFIED MAIL—30¢ (plus postage)

SENT TO Hon. Maurice A. Roberts		POSTMARK OR DATE  10/4/74
STREET AND NO. Bd. of Immigration Appeals Department of Justice		
P.O., STATE AND ZIP CODE Washington, D. C. 20530		
OPTIONAL SERVICES FOR ADDITIONAL FEES		
RETURN RECEIPT SERVICES	1. Shows to whom and date delivered .....	15¢
	With delivery to addressee only .....	65¢
	2. Shows to whom, date and where delivered ..	35¢
	With delivery to addressee only .....	85¢
DELIVER TO ADDRESSEE ONLY .....		50¢
SPECIAL DELIVERY (extra fee required) .....		
PS Form 3800 NO INSURANCE COVERAGE PROVIDED— (See other side) Apr. 1971 NOT FOR INTERNATIONAL MAIL * GPO : 1972 O - 466-743		

October 4, 1974

Hon. Maurice A. Roberts  
Board of Immigration Appeals  
Department of Justice  
Washington, D. C. 20530

Re: Viola Chow  
A12 084 054

Honorable Sir:

I was advised by letter of the Immigration and Naturalization Service, New York City, dated September 24, 1974, that the file of Lei Choun Hsu was available for my inspection. I made an appointment with William B. Gurock, Chief Trial Attorney in the New York District, and inspected the file on October 2, 1974.

I was permitted access to inspect the record file, but the government administrative file was not made available, except to show me the record of deportation and the Lookout Notice.

The file apparently is a file of the New York office and apparently has been there since 1959. The file is under the name of Lei Choun Hsu, the identical name for which I have made repeated requests since the hearing on July 13, 1973. It has been repeatedly reported to me by the District Office that the file was not available. Indeed, the Immigration Judge in his opinion states that:

"A check of the Service indices by the trial attorney failed to locate any record relating to Lei Choun Hsu."

Likewise, the Board in its decision referred to the "fact" that a check of Service records failed to locate any records relating to Lei Choun Hsu.

It is apparent that the records were available in the files of the Service and were not made available to the undersigned, thereby effectively precluding the respondent from obtaining factual data.

It is respectfully requested that the letter of the Immigration and Naturalization Service, dated September 24, 1974, a copy of which is enclosed herewith, be made a part of the record on appeal, since it is an integral part of the appeal and supports one of the points raised by respondent on the motion to reopen the hearing.

Respectfully yours,

IEF:fw

IRVING E. FIELD

cc: Enclosed for Paul C. Vincent, Appellate Trial Attorney

A-75

UNITED STATES DEPARTMENT OF JUSTICE  
Board of Immigration Appeals

BOARD OF IMMIGRATION APPEALS

\*\*\*\*\*  
IN THE MATTER OF THE DEPORTATION OF

VIOLA CHOW

A12 084 054

Respondent

\*\*\*\*\*

GOVERNMENT'S MEMORANDUM  
IN OPPOSITION TO RESPONDENT'S  
MOTION TO REOPEN & RECONSIDER

PRELIMINARY STATEMENT

The respondent, a 37-year-old divorced female, is a native and citizen of China who entered the United States, on October 19, 1959, in diplomatic status. She subsequently had her status adjusted to that of a permanent resident.

On April 17, 1968 she was convicted, in the Federal District Court for the Southern District of New York, for a violation of 21 USC 173, 174 (unlawfully, willingly and knowingly, receiving, concealing, selling and facilitating the transportation, concealment and sale of opium and conspiracy to do so). She was sentenced to a term of imprisonment in the Federal Reformatory for Women, Alderson, West Virginia. On November 13, 1969 a deportation hearing was held at the institution. She selected Hong Kong as her destination if ordered deported. She was informed by the Immigration Judge that if Hong Kong refused to accept her she would be ordered deported to Formosa. At that hearing the respondent filed an application for §243(h) relief.



On April 28, 1971 a hearing was held on her §243(h) application. The relief was denied and she was ordered deported to (1) Hong Kong or (2) Formosa.

On October 14, 1971 the deportation hearing was reopened to permit the respondent a further opportunity to present her case since she had now obtained counsel. On November 8, 1971 her application was again denied and the order of deportation was reissued.

On November 17, 1971 a notice of appeal was filed which showed that the respondent was represented by a law student. The notice of appeal was basically an appeal for clemency and leniency. In that notice however respondent set forth that one of her reasons for fear of physical persecution was that several years before she had read in a Chinese newspaper about a man who had murdered a person in the United States for which homicide he had served a ten year prison sentence. Upon his release he was deported and upon his arrival in Formosa he received a prison sentence of ten years because of his having been deported from the United States for the crime of murder.

On April 26, 1972 a brief was filed with the Board by Irving E. Field, Esq., present counsel for the respondent. Oral argument was held, with Mr. Field participating, on April 26, 1972. On May 25, 1972 the Board issued an order remanding the case to the Immigration Judge for the receipt of new evidence material to the issue of respondent's eligibility for §243(h) relief. On

November 25, 1972 a reopened hearing was held by Immigration Judge Francis J. Lyons where the respondent was represented by Mr. Field. On July 19, 1973 Immigration Judge Lyons issued a decision denying the §243(h) application. In his order Judge Lyons stated:

"She has failed to meet her burden of establishing by any substantial, credible evidence that the particularized persecution contemplated under §243(h) would result upon her return to Taiwan".

In his decision Judge Lyons referred to the fact that the Service had been unable to locate in the indices a file relating to an alien by the name of LEI CHOUN HSU. The indices search had been conducted by the Service at the request of Mr. Field. By notice dated August 2, 1973 the respondent through Mr. Field appealed from Judge Lyons decision.

On October 1, 1973 the Board returned the file to the Service so that the views of the Office of Refugee & Migration Affairs, Department of State, could be solicited. By letter dated June 3, 1974 the Department of State advised the Service that it was unable to conclude that the respondent would suffer persecution on account of race, religion, nationality, political opinion or membership in a particular social group should she return to the Republic of China. In that letter the Department of State noted that because of the respondent's conviction for a narcotics offense she would likely be put under surveillance in Formosa to ensure that a repetition of her activities did not occur. The Department of State letter then went on to say that that fact was not germane to the refugee status of the respondent.



By order dated August 2, 1974 the Board dismissed respondent's appeal.

#### DISCUSSION

No valid purpose would be served by reopening these proceedings. Both the Immigration & Naturalization Service and the Board of Immigration Appeals have given careful consideration to the persecution claim first submitted by the respondent while she was still in prison in November 1969. The Board, in its decision of August 2, 1974, took pains to point out that a fear of arrest in Formosa for previous narcotics activity did not come within the criteria of §243(h) relief.

Since her first application the main thrust of respondent's claim is based on some possible action by the police on the island of Formosa. The record is replete with information that her belief is based on the fact that other Chinese nationals have been arrested or harassed upon their return to Formosa because they had criminal records for narcotics violations. The Government submits that, even if these facts are true, there is no possible way in which they can be regarded as persecution because of race, religion, nationality, political opinion or membership in a particular social group.

Since the reopened hearing before Judge Lyons, in July 1973, Mr. Field has sought to review the immigration file concerning one LEI CHOUN HSU, A15 124 516. Copies of correspondence between Mr. Field and the Service which are now in the record file show

that Mr. Field inspected the HSU file in New York City on October 2, 1974. That file relates to a Chinese national who arrived in the United States as a crewman several years ago. After his arrival he murdered his girlfriend, was convicted for homicide, and served seven years in the penitentiary. Upon his release he was deported to Taiwan by the Immigration & Naturalization Service. There is nothing in the file to indicate that the question of §243(h) relief was involved in any way.

The Government, for the purpose of this memorandum, will assume that Mr. Field will attempt to introduce "evidence" that Mr. Hsu was arrested by the Chinese police upon his return to Formosa. Assuming, arguendo, this to be the fact, the Government submits that the internal operation of the Chinese police, or other government officials, involving one of their own nationals is completely irrelevant to the instant deportation proceedings which simply involve a §243(h) claim for asylum.

#### CONCLUSION

WHEREFORE, for all of the foregoing the respondent's motion should be denied.

Respectfully submitted,

*Paul C. Vincent*  
Paul C. Vincent  
Appellate Trial Attorney  
Immigration & Naturalization  
Service

02. 1974



UNITED STATES DEPARTMENT OF JUSTICE  
IMMIGRATION AND NATURALIZATION SERVICE  
BOARD OF IMMIGRATION APPEALS

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In the Matter of	:	<u>File No. A12 084 054</u>
VIOLA CHOW,	:	RESPONDENT'S MEMORANDUM IN
	:	<u>SUPPORT OF MOTION TO REOPEN</u>
Respondent.	:	

----- x

PRELIMINARY STATEMENT

A motion is before the Board of Immigration Appeals to reopen the appeal in the above-entitled matter and for reconsideration of the decision and order of the Board dated August 1, 1974. The Board set October 23, 1974, as the date for argument, and, on its own motion, invited oral argument and the filing of briefs. The hearing of argument has been adjourned to October 30, 1974, at the request of the Respondent.

CHRONOLOGY

July 13, 1973: Decision of Immigration Judge.

July 23, 1973: Decision of Immigration Judge mailed to attorney for Respondent.

August 2, 1973: Notice of Appeal filed. Specific request made in writing in Notice of Appeal for transcript of hearing and for copies of exhibits to use in preparation of brief. Extension requested to prepare brief by reason thereof. Oral argument specifically requested.

August 30, 1973: Notice of Argument for September 19, 1973 mailed by Board.

September 13, 1973: After telephone conversation, Respondent's attorney requests by letter that file be completed by processing in accordance with

OI 108. Specific request made that new date be assigned for argument and that undersigned be granted an opportunity to present brief if State Department ruling unfavorable.

September 19, 1973: Decision of Board to return file to New York office for processing in accordance with OI 108, prior to a decision on the merits by the Board.

September 20, 1973: Interview under OI 108 conducted at New York office.

October 1, 1973: Administrative file returned to New York office.

June 7, 1974: Letter sent by New York office denying political asylum. Letter concludes: "You will be further advised of the action to be taken in your case."

August 2, 1974: Decision of Board dismissing appeal mailed.

August 5, 1974: Letter sent to Board objecting to decision without argument or brief of Respondent.

August 8, 1974: Letter sent by Board suggesting Respondent make formal motion for reconsideration.

August 8, 1974: Notice of deportation for August 22, 1974, sent by New York office.

August 15, 1974: Motion for reconsideration filed. Stay of deportation denied.

August 16, 1974: Letter sent to Board that Respondent's attorney now advised that New York office has file previously requested and never furnished to attorney. (Lei Choun Hsu)

August 20, 1974: New York office reverses itself and grants stay.

September 11, 1974: Decision of Board to grant oral argument on motion to reopen. October 23, 1974 set for argument. Both sides invited to file briefs.

September 24, 1974: New York office advises Respondent's attorney that file of Lei Choun Hsu available



October 2, 1974: File of Lei Choun Hsu inspected for the first time, fifteen months after decision of Immigration Judge and two months after decision of Board of Immigration Appeals.

POINT I

THE CONSTITUTION AFFORDS THE RESPONDENT  
SUBSTANTIVE AND PROCEDURAL DUE PROCESS

A resident alien has the same protection for his life, liberty and property under the due process clause as is afforded to citizens. (Galvan v. Press, 347 US 522, 530.) We need not burden the Board with a recitation of other cases, with which the Board undoubtedly is familiar.

POINT II

RESPONDENT HAS NOT BEEN AFFORDED EITHER  
SUBSTANTIVE OR PROCEDURAL DUE PROCESS

1. Respondent has not been afforded the right to confront witnesses against her whose statements to Immigration Service representatives were included in the record.

The Board had relied (albeit after the decision of the Immigration Judge) upon a letter from the Office of the Refugee and Migration Affairs of the Department of State, with regard to Respondent's claim of persecution. Apparently, even more remote hearsay statements from the Taiwan government have been relied upon by the Service. It is a denial of due process not to permit the Respondent to offer proof to contradict, deny, or refute these allegations. Indeed, the case of Lei Choun Hsu, to which we shall refer later, may well contain in itself such refutation. Nonetheless, the bare refusal, whether inadvertent or deliberate, to permit Respondent an opportunity to offer such proof, is

in itself a denial of due process.

2. The failure or refusal to permit the Respondent to inspect the file of Lei Choun Hsu also constitutes denial of due process. It is now apparent that this file has been in the possession of the New York office during the entire time that it was disclaiming such possession. It is a denial of due process regardless of whether such file was deliberately withheld, or whether a cursory search or no search was made. Both the decision of the Immigration Judge and the Board of Appeals referred to the fact that "a check of Service records failed to locate any records relating to Lei Choun Hsu."

3. The Board has failed to afford the Respondent procedural due process by failing to permit Respondent's counsel an opportunity to file a brief or have oral argument after the record on appeal was finally completed. Respondent's counsel specifically requested both oral argument and the right to file a brief. The Board is bound by the regulations of the Attorney General. (Matter of Tzimas, 10 IN 101.)

4. Despite repeated requests, Respondent's attorney has not received a transcript of the hearing or copies of exhibits submitted. Even had the Board permitted the filing of a brief and oral argument there could not have been an effective presentation without the transcript and the exhibits.

#### POINT III

THE BURDEN IS UPON THE SERVICE TO SUPPORT  
DEPORTATION BY CLEAR, UNEQUIVOCAL AND  
CONVINCING EVIDENCE

The Supreme Court has imposed upon the Immigration Service a



heavy burden in deportation cases. The Service must prove its case by "clear, unequivocal, and convincing evidence" (Woodby v. Immigration Service, 385 US 276.) It is apparent from the dissenting opinion in that case (p. 292) that this burden remains on the Service regardless of the "burden of proof" on specific issues. In the Woodby case, the dissenting opinion complained that the majority opinion mandated that the affirmative offense of duress interposed by the alien required refutation on the part of the Service by clear, unequivocal, and convincing evidence.

#### POINT IV

BECAUSE OF THE SEVERITY OF THE PUNISHMENT,  
THE RESPONDENT SHOULD BE AFFORDED EVERY  
OPPORTUNITY TO PROVE HER CASE

Although deportation is not a criminal proceeding, it has been noted by the courts that its impact upon the alien may indeed be as severe as, or more severe than, criminal punishment. (Bridges v. Wixon, 326 US 135, 154; Delgadillo v. Carmichael, 332 US 388, 391; Ng Fung Ho v. White, 259 US 276, 284; Galvan v. Press, 347 US 522, 530.)

#### POINT V

DENIAL OF AN OPPORTUNITY FOR RESPONDENT  
TO PROPERLY PREPARE HER CASE IS A DENIAL  
OF DUE PROCESS

This motion to reopen is not the proper time for arguments going to the merits of the case. Respondent need not conjecture what an examination of the records to which she was entitled would have brought in the way of evidence. The very fact that the Service refused, for almost two years, to deliver the records sought is in itself evidence of

materiality and constitutes in itself a serious violation of the concept of a fair hearing and of due process.

#### CONCLUSION

Even had the constitutional rights of the Respondent not been violated, fair play and the requirements of a fair hearing would mandate that the Respondent have an opportunity to investigate the case of Lei Choun Hsu and its impact upon this case, and an opportunity to refute the position of the State Department and the contentions of the Taiwan government.

It is respectfully submitted that the following relief should be granted:

1. The appeal be reopened.
2. The case be returned to the Immigration Judge for a further hearing after the Respondent has been granted an opportunity to complete her investigation, or in the alternative, that the respondent be granted an opportunity to have oral argument and to submit a brief on the issues involved in this case.

Respectfully submitted,

IRVING E. FIELD  
Attorney for Respondent Viola Chow



BEFORE THE BOARD OF IMMIGRATION APPEALS

Oral Argument: Oct. 30, 1974

In Re: VIOLA CHOW

File: A-12 084 054

Board: Miss Wilson, Mr. Maniatis  
and Mr. Jakaboski

Heard: For Respondent: Irving E. Field, Attorney  
310 Madison Ave.  
New York, New York 10017

For Immigration Service: Irving A. Appleman,  
Appellate Trial Attorney

Request: Reopen for 243(h) Relief

Attorney: Before I commence I do want to correct one misapprehension in the record. I am not proceeding here without a fee, I have been paid a nominal fee which barely covers my disbursement. I did want to correct the record. This is a motion to reopen for the reconsideration of the Board. The motion is predicated on the fact despite the notice of appeal specifically requested oral argument and submission of a brief, I was not granted this opportunity.

The circumstances under which it arose is that the file was sent back by this Board to New York and I was advised by the New York office that I would be notified further that the State Department had denied the application for asylum and I would be notified of further proceedings. The first notification I received was that the Board had dismissed the appeal

I claim that this constituted denial of due process, substantive due process, and was in violation of the regulations of the Attorney General which are binding on this Board. Mr. Appleman has addressed his brief to the

consideration of the facts, I don't think this is the forum or the time for it. I further predicate my motion upon the fact that the Board has alluded to the statement of the State Department, perhaps the Government of Taiwan, which I have not had an opportunity to rebut. There are a number of quotes which do so hold, that I am entitled to the statement which appears against me in the record, and I have not had an opportunity for a complete hearing.

There was a record that I requested, the name of Lei Choun Hsu, which I requested of the Immigration Judge and the Immigration said they had no such record and the Judge referred to this in his decision. This Board referred to this in their decision. 2 years later I was informed both directly and indirectly this record has been in the possession of the New York office all this time, and perhaps has been in the file.

It is not giving me an opportunity to research this matter and find the information I want from this case when I get the information 2 years after the hearing is concluded. I requested this during the course of the hearing and after the hearing. I strongly believe this is also a denial of due process wherein I received a paper which is in the possession of the Service, 2 years after I requested it. When it has all this time been in the possession of the Service and the Immigration Judge and the Board have all referred to the fact this record was not available during this period.

It is not a correction of the situation to tell me I can see this record now, after the hearing has been concluded. As a matter of fact I don't have to show to this Board what



this record will prove, I had no opportunity to research and find the information I want from the record. It may well be this record will refute the statements made by the Taiwan government. Section 1252 of the U.S. Code specifically requires the alien shall have a reasonable opportunity to examine the evidence against him, present evidence in his own behalf, and cross-examine witnesses presented by the government.

This I say, has not been granted to me, and I have had no opportunity to even examine the record which the Taiwan government and the State Department have presented to the Board, and to which the Board has referred in its opinion. I believe that due process requires that I be given an opportunity to examine and rebut this, and the case of Ex Parte Harumi Motoshige, 6 F. Supp. 792 does briefly allude to such a requirement.

There are also other cases, and as I say, the statute itself and the regulations of the Attorney General do give me this opportunity, particularly the opportunity to present the brief and have oral argument before this Board, which at that point might well have led to my obtaining the record in the case of Lei Choun Hsu, and would have saved all this time.

The government has somehow taken the position here, rather the Service has taken the position I am causing delay here, that everything should be rushed now, and this is not the case. The Service took a year before it gave me any information at all under the proceedings.

Mr. Appleman: I think Mr. Field has gotten an

extraordinary amount of mileage out of the case of some other Chinese in no way related to this alien, Lei Choun Hsu, who allegedly was sent back to Taiwan and allegedly there something happened to him.

What I see reflected by the record is that we did have trouble finding this file, and it turned up eventually as I understand it, in another District entirely, and we took a lot of pains to find it. I don't see the relevance of this, frankly, but somebody wanted it, so we endeavored to get it and satisfy counsel.

We notified him on Sept. 24, 1974 that we had the file and he was welcome to look at it. On Oct. 4, 1974 I see a letter he addressed to the Chairman where he says he did inspect the file on Oct. 2, 1974, and was permitted access to inspect the record file, and we come in here expecting argument on the merits of the thing, and what showed up as an inspection of the file might have some bearing and significance, and all we get out of this is a further tirade about this same file notwithstanding the fact the Board saw fit to reopen, and saw fit to schedule oral argument on his motion; which is unusual if not extraordinary.

And now, rather than coming here and arguing the merits of his case, which is a matter of <sup>a</sup>Section 243(h) application, for this narcotic offender, he comes in here arguing about the file and about notice to him and all of the other aspects of the due process proposition with respect to a proceeding that has been pending since 1969.

This woman is a narcotic offender, who was convicted in 1968, and since that time we have been trying to remove her from the U.S. Now, what <sup>has</sup> counsel



to say as to what warrants a further consideration of this case, and a reopening of it? And I for one, came in prepared to listen and hear, but I don't hear anything. I don't hear any comment, no comment whatsoever that is addressed to the merits of the proposition, but a further diatribe about his due process and so forth.

I went through the record with a fine-tooth comb and Mr. Vincent sat down and wrote a memorandum of several pages, because he felt there was absolutely no merit to the thing, and he wanted to straighten out the record. I would like to hear counsel address himself to the record and the merits of it, of the case, and if he has got something with respect to 243(h), fine, let it be reopened and heard. Let whatever evidence is necessary, be adduced, but to come in here and say he has had a lack of due process with respect to this case after the extreme consideration he has received in this case from the Service and from the Board both, I think is most unfair.

Mr. Jakaboski: Mr. Appleman, apparently counsel said he didn't feel this was the proper forum to go into the factual details. Are you saying that perhaps you might agree with him on that but you are saying he has to come forward with a prima facie case?

Mr. Appleman: With something, come forward with something. His application for 243(h) is based on the proposition this woman is a narcotic offender and because she is a narcotic offender, and has been convicted, when she goes back the allegation is that she will be persecuted within the meaning of the refugee provision of the statute; and he has got to show something to support this.

Now we have afforded him everything we can in the way of something from our record to support him. We gave the file to him that he insisted on, relating to an entirely un-related proposition. Apparently he examined the file and I would daresay if he found something in that with regard to supporting his position, he would be here telling you about it, but my guess is he didn't find anything that was in any way relevant. I don't think, from the decision of the Judge, there was anything relevant.

Mr. Jakaboski: You are saying any procedural difficulties he had were harmless?

Mr. Appleman: He can offer them here today, that is why we are here letting him argue his case, fine, let him say it, I have no objection, but to let him spout over a lack of due process is unfair when he has had the consideration he has received.

Attorney: I was under the impression and I still am, that this was argument on a motion to reopen, on the ground I outlined in my notice to reopen. If I am in error, I wish the Board would inform me to that effect and I will endeavor to argue on the merits even though I am not prepared. And I might stress that I was not afforded the opportunity to examine the Lei Choun Hsu file, I was specifically not afforded that opportunity.

Despite the fact there is no question about it that I was not afforded an opportunity to examine that file. I was permitted to take certain information from the face of the file, that is all. I was not permitted to examine it, and I think Mr. Gurock will confirm that.

Mr. Jakaboski: You want to reopen to show the possibility that her life or liberty will be threatened



because of her race, nationality, religion, political beliefs or membership in a particular social group. How do you get to that from a narcotics offender?

Attorney: I believe I can see that now but I need an opportunity to do so. I just got into this thing. I have asked for this for 2 years now and now Mr. Appleman tells me I have to come in and argue on the merits which I have not had a chance to go into it and I don't understand it.

Miss Wilson: I think the Board did expect you would give some argument on the merits, so if you could address yourself to the merits, we would like to hear what you have to say.

Attorney: I believe that on the basis of the facts I can show the Taiwan government is not telling the truth when they say this woman will not be persecuted. I can show that from the record in the case of Lei Choun Hsu and that has led to other things, but I don't know that here, I have not had the time to do it. I asked for this 2 years ago, to develop these facts.

Mr. Maniatis: This conviction of a crime, is this persecution, or is it prosecution?

Attorney: Conviction of a crime in Taiwan? If it is known that she believes that Red China should be recognized by the U.S., she will immediately be thrown in prison.

Mr. Jakaboski: Wasn't she claiming this other Chinese gentleman <sup>who</sup> was in Taiwan, who was in difficulty because he had been convicted of a narcotics crime here?

Attorney: No, he was not convicted of a narcotics crime at all here. He was just put in jail because he had been in the U.S. for so long and because he had been convicted of a crime in the U.S. It wasn't narcotics.

Mr. Appleman: It was murder.

Attorney: It was manslaughter, and I have not been granted an opportunity to examine the administrative file as to this gentleman.

Mr. Jakaboski: Who do you connect the other file with in this case?

Attorney: I asked for this initially 2 years ago so I could search, make a search of it and find out on the record of this person, and what happened to him, and other people connected with him. I did not have the dates and couldn't do it. I asked for it repeatedly and if it was given to me at that time, I would not be before you now.

Mr. Jakaboski: Assuming arguendo he was persecuted because of a crime he had committed here, how does that affect this case?

Attorney: The same like, the same thing would happen to her.

Mr. Jakaboski: Does it come under the 5 things in the Protocol?

Attorney: That has to be taken in connection with the fact that she believes in recognition of Red China, and she has been in the country so long. These are all facts that have to be linked together, and I can show it in this connection with Lei Choun Hsu, with his file, and with other people. I got his name from the attorney who represented him and I can get others from him.



Mr. Maniatis: Does this letter speak in favor of Red China?

Attorney: They didn't then but it is much worse now that she has.

Mr. Appleman: On the Lei Choun Hsu file I have got to get this straight for my own peace of mind. Counsel on Oct. 4, 1974, addressed a letter to the Chairman of this Board. It is in the file, at least I have a copy, and I assume it is in the file, and he says this; that he was advised that the file was available for his inspection in New York. He made an appointment with William Gurock, trial attorney in the New York District, and inspected the file on Oct. 2, 1974. "I was permitted access to inspect the record file but the government administrative file was not made available, except to show me the record of deportation and the look-out notice."

Nobody inspects the government's administrative file that I know of other than somebody who works for the government, inter-office stuff. He sought and inspected it and I don't know what more we can make available to furnish to him, and I don't see the relevance, a darned bit of relevance to the Lei Choun Hsu case and this one. If he can show that, and if, even if he can show it within the next few weeks while the argument is being transcribed, I would have no objection.

The Service has never expressed a desire to stand upon technicalities of any kind with respect to an alien who may be persecuted. Mr. Field should know, and if he doesn't I am apprising him of it now, that it is not the Service desire to see anybody persecuted in this world where they come within our statutes as refugees. But,

when he has had every opportunity in the world, and is just seeking more time, and more time to prolong this thing, to prolong the alien's stay in the U.S., perhaps he has it in mind that she will qualify for suspension in another year or so, that is how long this has dragged out----I don't say that is what he has in mind but if that is the case, he is going about it the right way, to drag it out and delay.

But to come here before this Board at this stage of the game and say I am not going to argue the merits with respect to 243(h) because of these procedural aspects, and when the Board presses him to argue the merits, he comes up with the same flimsy proposition he advanced before, identical proposition which the Board rejected. I see nothing to it. Frankly I ask the matter be given summary treatment by the Board. I see no merits whatsoever, which is a highly discretionary proposition, nothing to support it. You have considered it at length, all the serious aspects of the case, and made a considered judgment in the matter, and that should be the "end" of it.

Miss Wilson: Mr. Field, it will take some time for this to be transcribed, so if you have something in the next few weeks on the merits, that you wish the Board to have, we will receive it.

Attorney: I have been accused here of delaying tactics, but the delay was not caused by me. On Sept. 19, 1973 the Board returned the file to New York, on Sept. 20, 1973, one day later, I appeared at the Board, submitted my client for interview, in pursuance of 101(b), and it was not until 9 months later that the Immigration Service acted.



Unless Mr. Appleman contends I have arranged for the Immigration Service not to act during that time, I don't believe I have that much influence. The delay was not because, it was not caused by me, and I don't see why I should be rushed now. The Service took its time so why shouldn't I have the time to prepare my client's defense here?

It is a very serious matter, not a laughing matter at all. It is a violation of a substantial constitutional right that I am complaining about here. Why should I be forced to submit something in 3 weeks? I don't see it. If this is the attitude the Service is going to take, then I think they are wrong. They caused the delay, not I, and whether I will have relief at a future date, doesn't concern us, because they caused the delay, not I.

I appeared here and appeared promptly before the Service when they asked me to, and I appeared the day after the file was returned, and I examined the file, such of the file as they permitted me to examine promptly, after I was notified. Why should I be in a position of one who is causing delay here? I have not. It is the Service that is causing the delay, and I don't see why I should be rushed. I should have time to prepare my case here and present it in a logical fashion with briefs and with witnesses. I am entitled to an opportunity to review what the Service has said here. I am entitled to it as a matter of right, and I don't think the Service can force me to act hastily. Let them look to themselves first and see who caused the delay.

Miss Wilson: We will consider this and let you know our opinion.

mb - 1/10/75



UNITED STATES DEPARTMENT OF JUSTICE

BOARD OF IMMIGRATION APPEALS

Washington, D.C. 20530

February 13, 1975

Irving E. Field, Esquire  
310 Madison Avenue  
New York, New York 10017

CHOW  
A12 084 054

Dear Sir:

Reference is made to your interest in the above  
case.

For your information, there is enclosed herewith  
copy of the decision and order of the Board of Immigration  
Appeals.

Sincerely yours,

*David L. Milhollan*

David L. Milhollan  
Chairman

Enclosure





United States Department of Justice

Board of Immigration Appeals

Washington, D.C. 20530

FEB 13 1975

File: A12 084 054 - New York

In re: VIOLA CHOW

IN DEPORTATION PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Irving E. Field, Esquire  
310 Madison Avenue  
New York, New York 10017

ON BEHALF OF I&N SERVICE: Irving A. Appleman  
Appellate Trial Attorney

ORAL ARGUMENT: October 30, 1974

CHARGE:

Order: Section 241(a)(11), I&N Act (8 U.S.C.  
1251(a)(11)) - Convicted of  
violation of laws governing  
taxing, etc. of drugs: opium,  
and conspiracy to do so

APPLICATION: Reopening and reconsideration

The record relates to a 39-year-old female alien who is a native and citizen of China. On April 17, 1968 she was convicted in the United States District Court for the Southern District of New York for unlawfully, wilfully and knowingly receiving, concealing, selling and facilitating the transportation, concealment and sale of opium and conspiracy to do

so, in violation of 21 U.S.C. 173, 174. Subsequently, she was found deportable under the provisions of section 241(a)(11) of the Immigration and Nationality Act. She was ordered deported to Hong Kong and alternatively to the Republic of China on Formosa. Her application for temporary withholding of deportation under section 243(h) of the Act was denied.

The case is before us on motion of the respondent to reopen the proceedings for reconsideration of our decision of August 2, 1974.

In his motion counsel argues that the respondent has not been afforded due process and equal protection of law.

We have carefully reviewed the record which shows beyond cavil that the respondent and her counsel have been afforded fair and repeated consideration, and that the suggestion that due process was denied the respondent is utterly groundless. We note that on October 2, 1974 counsel inspected the record file pertaining to Lei Choun Hsu, which he alleges is important to this case. Counsel has offered nothing new on the merits of the 243(h) application. Moreover, counsel has not shown how the Lei Choun Hsu case is relevant to the case before us. We conclude that the motion fails to set forth any new material or evidence which would warrant reopening, and that the respondent has not met the clear requirements for reopening under the regulations. Accordingly, the following order will be entered.

ORDER: The motion is denied.

David L. Milhollan

Chairman



FIELD

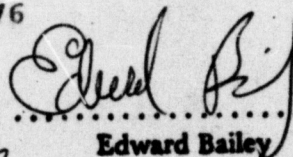
Chow v. Inn.

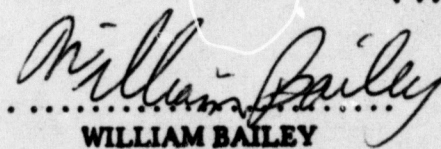
**AFFIDAVIT OF PERSONAL SERVICE**

**STATE OF NEW YORK,  
COUNTY OF RICHMOND ss.:**

EDWARD BAILEY being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 5 day of Jan. 19 76 at No. 1 St. Andrews Plaza NYC deponent served the within Appendix upon U.S. Attorney the Appellee herein, by delivering a true copy thereof to h personally. Deponent knew the person so served to be the person mentioned and described in said papers as the Appellee therein.

Sworn to before me,  
this 5 day of Jan. 19 76

  
.....  
Edward Bailey

  
.....  
WILLIAM BAILEY

Notary Public, State of New York  
No. 43-0132945

Qualified in Richmond County  
Commission Expires March 30, 1976